

**UNITED STATES BANKRUPTCY COURT  
FOR THE DISTRICT OF DELAWARE**

In re:

SCHOOL SPECIALTY, INC., *et al.*,Debtors.<sup>1</sup>

Chapter 11

Case No 13-10125 ( )

Joint Administration Requested

**MOTION OF DEBTORS FOR ENTRY OF INTERIM AND FINAL ORDERS  
(I) AUTHORIZING DEBTORS TO (A) OBTAIN POSTPETITION FINANCING  
PURSUANT TO 11 U.S.C. §§ 105, 361, 362, 364(c)(1), 364(c)(3), 364(d)(1), 364(e) AND  
507, (B) UTILIZE CASH COLLATERAL PURSUANT TO 11 U.S.C. § 363, (C) GRANT  
PRIMING LIENS AND SUPERPRIORITY CLAIMS TO THE DIP LENDERS,  
(D) PROVIDE ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES  
PURSUANT TO 11 U.S.C. §§ 361, 362, 363 AND 364, AND  
(E) REPAY IN FULL AMOUNTS OWED IN CONNECTION WITH THE  
PREPETITION SECURED LOANS OR OTHERWISE CONVERTING THE  
PREPETITION SECURED OBLIGATIONS INTO POSTPETITION SECURED  
OBLIGATIONS, (II) SCHEDULING A FINAL HEARING PURSUANT TO  
BANKRUPTCY RULES 4001(b) AND (c) AND (III) GRANTING RELATED RELIEF**

School Specialty, Inc. ("SSI") and certain of its subsidiaries, as debtors and debtors in possession in the above-captioned cases (collectively, the "Debtors" or the "Company"), file this motion (this "Motion") for (a) entry of an interim order substantially in the form attached hereto as Exhibit A (the "Interim Order") (I) authorizing the Debtors to (A) obtain postpetition senior secured super-priority financing, (B) use the cash collateral of the Prepetition Secured Lenders (as defined below), (C) grant priming liens, priority liens, and superpriority claims to the DIP Lenders (as defined below), (D) provide adequate protection to the Prepetition Secured Lenders and (E) repay in full amounts owed in connection with the Prepetition ABL

<sup>1</sup> The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number and state of incorporation, are: School Specialty, Inc. (Wisc.; 1239), Bird-In-Hand Woodworks, Inc. (N.J.; 8811), Califone International, Inc. (Del.; 3578), Childcraft Education Corp. (N.Y.; 9818), ClassroomDirect.com, LLC (Del.; 2425), Delta Education, LLC (Del.; 8764), Frey Scientific, Inc. (Del.; 3771), Premier Agendas, Inc. (Wash.; 1380), Sax Arts & Crafts, Inc. (Del.; 6436), and Sportime, LLC (Del.; 6939). The address of the Debtors' corporate headquarters is W6316 Design Drive, Greenville, Wisconsin 54942.



Credit Agreement (as defined below) or otherwise convert the prepetition debt into postpetition obligations; (II) scheduling a hearing to consider the relief requested in this Motion on a final basis (the “Final Hearing”); and (III) granting related relief; (b) entry of a final order (i) authorizing, among other things, the Debtors to repay in full amounts owed in connection with the Prepetition Term Loan Credit Agreement (as defined below) and (ii) granting the relief requested in this Motion on a final basis (such final order the “Final Order,” and together with the Interim Order, the “DIP Orders”).<sup>2</sup> In support of this Motion, the Debtors respectfully represent as follows:

### **JURISDICTION**

1. The United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”) has jurisdiction over this matter pursuant to 20 U.S.C. §§ 157 and 1334 and the Amended Standing Order of Reference from the United States District Court for the District of Delaware dated as of February 29, 2012. This matter is a core proceeding within the meaning of 28 U.S.C. § 157(b)(2).

2. Venue is proper pursuant to 28 U.S.C. §§ 1408 and 1409.

3. The statutory bases for the relief requested herein are sections 105, 361, 362, 363(c), 363(e), 364(c), 364(d)(1), 364(e), and 507 of title 11 of the United States Code (the “Bankruptcy Code”), rules 2002, 4001, and 9014 of the Federal Rules of Bankruptcy Procedure (the “Bankruptcy Rules”), and rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedures (the “Local Rules”).

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<sup>2</sup> The Debtors will provide a proposed Final Order to the Bankruptcy Court, the Office of the United States Trustee for the District of Delaware (the “U.S. Trustee”), and all parties in interest upon appropriate notice in advance of the Final Hearing.

## INTRODUCTION

4. Prior to the filing of the Debtors' chapter 11 cases (the "Chapter 11 Cases"), the Debtors, after extensive good faith and arm's length negotiations with their prepetition secured lenders, successfully negotiated postpetition financing to ensure continuation of the Debtors' businesses as a going concern and to maximize value for the estates.

5. By this Motion, the Debtors seek approval of, among other things, (i) super-priority postpetition financing in the aggregate principal amount of up to \$144,665,931.42 to be provided by Bayside Finance, LLC (the "Bayside DIP Facility") consisting of (a) a credit facility in the amount of \$50,000,000 in respect of new money funding (the "Incremental DIP Term Facility") and (b) upon entry of the Final Order, a repayment by way of a "roll up" of \$94,665,931.42 in respect of the Prepetition Term Loan Debt (as defined below) (the "Bayside Roll Up DIP Loans") (as defined in the Interim Order); (ii) (a) a super-priority revolving credit facility made available to the DIP Borrowers (as defined below) in an aggregate principal amount of up to \$175,000,000 to be provided under the ABL DIP Facility (defined below) and (b) repayment of the full amounts outstanding as of the Petition Date in respect of the Prepetition ABL Debt (as defined in the Interim Order) and other prepetition debt owed thereunder (collectively, the "ABL Roll Up Obligations"); and (iii) use of Cash Collateral (as defined below).

6. As set forth below, access to these DIP Facilities (as defined below) and cash collateral is critical to the Debtors' ability to continue to operate and to permit the Debtors to maximize value for all stakeholders. Moreover, the DIP Facilities are the best and only viable financing options available to the Debtors.

7. For the last several months, the Debtors have worked with their advisors to devise a liquidity solution for their businesses. However, despite those exhaustive efforts, on the eve of the Petition Date, the Company did not have sufficient funds to continue to operate their businesses. Thus, as of the Petition Date, absent the liquidity solution offered by the DIP Facilities proposed by the Agents under the Debtors' prepetition secured credit facilities, the Debtors would have been required to commence an immediate shut down of their operations and liquidation of their assets to the detriment of their vendors, employees and all other stakeholders. Instead, the DIP Facilities, which are conditioned on a sale of substantially all of the Debtors' businesses pursuant to section 363(b) of the Bankruptcy Code (the "Bayside Sale") in accordance with the milestones required under the DIP Facilities, permit the Debtors to run a competitive sale process designed to maximize value for their creditors because the sale is subject to an auction process that will yield the highest and best offer.

8. Approval of the DIP Facilities and the use of Cash Collateral will enable the Debtors to pursue approval of the sale of the Debtors' assets without delay, while simultaneously permitting the Debtors to satisfy their current and ongoing operating expenses, including postpetition wages and salaries, utilities, taxes, and vendor costs. Absent the required financing, the Debtors' operations would come to an immediate halt, resulting in irreparable harm to their businesses, their going concern value, and ultimately, their ability to pursue a sale of substantially all of their assets – a course of action that the Debtors believe to be the most expeditious and effective means of maximizing value for their stakeholders.

9. In sum, approval of the DIP Facilities is necessary to support the proposed sale process and to satisfy critical financial obligations during these Chapter 11 Cases.



### **RELIEF REQUESTED**

10. By this Motion and for the reasons set forth below, pursuant to sections 105, 361, 362, 363(c), 363(e), 364(d)(1), 364(e) and 507 of the Bankruptcy Code, Bankruptcy Rule 2002, 4001, and 9014, and Local Rule 4001-2, the Debtors respectfully request that the Bankruptcy Court:

- a. authorize the Debtors, on an interim basis, to (i) obtain postpetition senior secured financing up to an aggregate principal amount of (x) \$25,000,000 pursuant to the Bayside DIP Facility and (y) up to \$175,000,000 pursuant to the ABL DIP Facility; provided that, although the total aggregate \$200,000,000 commitment under the DIP Facilities shall be made available on the Closing Date following entry of the Interim Order, during such interim period, the DIP Borrowers shall be permitted to use only such amounts as are consistent with the Budget (as defined below) and the applicable DIP Credit Agreement (as defined below), (ii) enter into and execute the Bayside DIP Credit Agreement (as defined below) and the ABL DIP Credit Agreement (as defined below), (iii) use the Cash Collateral of the Prepetition Secured Lenders (as defined below), (iv) grant priming liens and superpriority claims to the DIP Lenders, (v) grant adequate protection to the Prepetition Secured Lenders, and (vi) use the proceeds of the ABL DIP Facility to fully repay or “roll up” amounts outstanding as of the Petition Date in respect of the ABL Roll Up Obligations and other prepetition debt owed thereunder;

- b. authorize the Debtors, on a final basis, to (i) obtain postpetition senior secured financing up to an aggregate principal amount of (x) approximately \$144,665,931.42 pursuant to the Bayside DIP Facility and (y) up to \$175,000,000 pursuant to the ABL DIP Facility, (ii) use the cash collateral of the Prepetition Secured Lenders, (iii) “roll up” approximately \$94,665,931.42 outstanding as of the Petition Date, in respect of the Prepetition Term Loan Debt (as defined in the Interim Order), (iv) repay in full amounts outstanding as of the Petition Date, in respect of the ABL Roll Up Obligations, (v) grant priming liens and superpriority claims to the DIP Lenders, and (vi) provide adequate protection to the Prepetition Secured Lenders;
- c. schedule the Final Hearing to be held within thirty (30) days of the entry of the Interim Order; and
- d. grant related relief, in each case, on the terms and subject to the conditions described in this Motion and set forth in the proposed Interim Order and the DIP Credit Agreements.

### **SUMMARY OF RELIEF REQUESTED**<sup>3</sup>

11. By this Motion, the Debtors request entry of the DIP Orders, which, among other things, provide the Debtors with the following relief:

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<sup>3</sup> Unless otherwise specified, capitalized terms used but not defined in this concise statement shall have the meanings ascribed to such terms in the respective Bayside DIP Credit Agreement (as defined below) or ABL DIP Credit Agreement (as defined below) and the Interim Order. The summaries and descriptions of the terms and conditions of the DIP Credit Agreements (as defined below) and the Interim Order set forth in this Motion are intended solely for informational purposes to provide the Bankruptcy Court and parties in interest with an overview of significant terms of the DIP Credit Agreements and the Interim Order. In the event of any inconsistency between this Motion and the DIP Credit Agreements, the Interim Order and the Bayside DIP Credit Agreement or ABL DIP Credit Agreement (as applicable), shall control in all respects.

- a. Cash Collateral: authority to use the Debtors' cash on hand, cash proceeds of Prepetition Collateral (as defined below) and other cash that constitutes the Prepetition Secured Lenders' "cash collateral," as that term is defined in section 363(a) of the Bankruptcy Code (the "Cash Collateral");
- b. DIP Facilities: authority on an interim basis to obtain postpetition financing pursuant to the terms of the:
  - i. Senior Secured Super Priority Debtor-in-Possession Credit Agreement between the Debtors, as Borrowers and Guarantors and Bayside Finance, LLC, as Administrative and Collateral Agent, and certain lenders (the "Bayside DIP Credit Agreement")<sup>4</sup> in an amount not to exceed \$25,000,000 and
  - ii. Debtor-in-Possession Credit Agreement by and among the Debtors, as Borrowers and Guarantors and Wells Fargo Capital Finance, LLC, as administrative agent, and Wells Fargo Capital Finance, LLC and General Electric Capital Corporation, as co-collateral agents and the ABL DIP Lenders (the "ABL DIP Agreement" and, together with the Bayside DIP Credit Agreement, the "DIP Credit Agreements")<sup>5</sup> in an aggregate principal amount not to exceed \$175,000,000.

Borrowings under the DIP Credit Agreements will be used, among other things, for payment of (a) postpetition operating expenses and other working capital and financing requirements of the DIP Borrowers (as defined below) subject to the Budget (as defined below), (b) certain transaction and chapter 11-related fees, costs and expenses, (c) the Carve-Out (as defined below), (d) "adequate protection" (as set forth in section 361 of the Bankruptcy Code), and (e) the Prepetition Debt;

- c. DIP Facility Documents: authority to execute and deliver the DIP Credit Agreements and all agreements, documents and instruments contemplated by each (collectively, the "DIP Documents"), and to take all actions necessary, appropriate or required to comply with the Debtors' obligations thereunder and under the DIP Orders, including obligations to pay certain pre-and postpetition fees and

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<sup>4</sup> A copy of the Bayside DIP Credit Agreement in substantially final form is attached to this Motion as Exhibit B.

<sup>5</sup> A copy of the ABL DIP Credit Agreement in substantially final form is attached to this Motion as Exhibit C.

expenses (including, without limitation, reasonable fees and expenses of counsel and financial advisors) owed to the DIP Agents and the DIP Lenders thereunder;

- d. DIP Liens and Claims: as more fully described below, authority to grant the DIP Agents, for their own benefit and for the benefit of the DIP Lenders, senior, first priority, priming liens on the DIP Collateral (as defined in the Interim Order) securing, and superpriority claims in respect of, the DIP Facilities (the “DIP Liens”);
- e. Adequate Protection: approval of the Adequate Protection (as defined below) to be provided to the Prepetition Agents (as defined below) and the Prepetition Secured Lenders (as defined herein and, collectively, the “Prepetition Secured Parties”) to protect the Prepetition Secured Parties’ interests in the personal and real property of the Debtors constituting Prepetition Collateral (as defined below) under the Prepetition Loan Agreements (as defined below); and
- f. Repay in Full (or “Roll Up”) Amounts Outstanding Under The ABL Prepetition Credit Agreement. Subject to certain challenge rights of parties, authorization to use all Cash Collateral consisting of proceeds of ABL Priority Collateral (as defined below) to reduce the ABL Roll Up Obligations arising under or in connection with the Prepetition ABL Credit Agreement, and upon entry of the Interim Order, authorization to use the proceeds of the ABL DIP Facility to fully repay or deem issued or incurred under the ABL DIP Facility any ABL Roll Up Obligations.
- g. Repay in Full (or “Roll Up”) Amounts Outstanding Under the Prepetition Term Loan Credit Agreement. Upon entry of the Final Order, the Bayside DIP Facility shall be used to pay in full all unpaid amounts in respect of obligations under the Prepetition Term Loan Credit Agreement held by the lenders party thereto (the “Term Loan Lenders”), plus accrued and unpaid interest thereon through such date, and unpaid fees, costs and expenses, which amounts shall, pursuant to a cashless exchange, be refinanced and converted into Bayside Roll Up DIP Loans (as defined in the Bayside DIP Credit Agreement) under the Bayside DIP Facility.
- h. Final Hearing: Scheduling a date for a hearing on this Motion to consider entry of the Final Order, to be held within twenty-five (25) days of the entry of the Interim Order.

## SUMMARY OF PRINCIPAL TERMS OF DIP FACILITIES

12. Pursuant to Bankruptcy Rule 4001 and Local Rule 4001-2, the following are the material provisions of the Bayside DIP Credit Agreement and the ABL DIP Credit Agreement and the Interim Order:

<b>Borrowers</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<b><u>The Borrowers for each of the DIP Facilities are as follows:</u></b> SSI, ClassroomDirect.com, LLC, Delta Education, LLC, Sportime, LLC, Childcraft Education Corp., Bird-in-Hand Woodworks, Inc., Califone International, Inc., and Premier Agendas, Inc. (each a “ <u>DIP Borrower</u> ,” and, collectively, the “ <u>DIP Borrowers</u> ”).
<b>Guarantors</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<b><u>The Guarantors for each of the DIP Facilities are as follows:</u></b> Frey Scientific, Inc., Sax Arts & Crafts, Inc., Select Agendas, Corp. (collectively, the “ <u>DIP Guarantors</u> ,” and, together with the DIP Borrowers, the “ <u>DIP Obligors</u> ”).
<b>Administrative and Collateral Agent(s)</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<b><u>Bayside DIP Facility:</u></b> Bayside Finance, LLC (the “ <u>Bayside DIP Agent</u> ”)  <b><u>ABL DIP Facility:</u></b> Wells Fargo Capital Finance, LLC (the “ <u>ABL DIP Agent</u> ”) and Wells Fargo Capital Finance, LLC and General Electric Capital Corporation (each a “ <u>Co-Collateral Agent</u> ” and, together, the “ <u>Co-Collateral Agents</u> ”).  The Bayside DIP Agent together with the ABL DIP Agent are collectively referred to as the “ <u>DIP Agents</u> .”
<b>DIP Lenders</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i>	<b><u>Bayside DIP Facility:</u></b> Bayside Finance, LLC (the “ <u>Bayside DIP Lenders</u> ”).  <b><u>ABL DIP Facility:</u></b> Wells Fargo Capital Finance, LLC and GE Capital Bank, Bank of Montreal, and CIT Finance LLC (the “ <u>ABL DIP Lenders</u> ”).  The Bayside DIP Lenders together with the ABL DIP Lenders are collectively referred to as the “ <u>DIP Lenders</u> .”
<b>Commitment</b> <i>Bankruptcy Rule 4001(c)(1)(B)</i> <i>Local Rule 4001-2(a)(ii)</i>	<b><u>Bayside DIP Facility:</u></b> Super-priority credit facility made available to the DIP Borrowers in an aggregate principal amount of up to \$144,665,931.42 (the “ <u>Bayside DIP Facility</u> ”) consisting of a credit facility of \$50,000,000 (\$25,000,000 on an interim basis) (the “ <u>Incremental DIP Term Facility</u> ”) and, upon entry of the Final Order, a roll up of \$94,665,931.42 in respect of the Prepetition Term Loan Debt (the “ <u>Bayside Roll Up DIP Loans</u> ”). (Interim Order ¶ a.i.; Bayside DIP Credit Agreement § 2.1)  <b><u>ABL DIP Facility:</u></b> Super-priority revolving credit facility of \$175,000,000 (the “ <u>ABL DIP Facility</u> ”) and, upon entry of the Interim Order, a roll up in full of the ABL Roll Up Obligations (Interim Order ¶ a.ii.; ABL DIP Credit Agreement § 2.1)

	<p>The Bayside DIP Facility together with the ABL DIP Facility, the “<u>DIP Facilities</u>.”</p>
<p><b>Term</b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  The period from the Closing Date to the earliest of (i) June 30, 2013 (the “<u>Bayside DIP Maturity Date</u>”), (ii) the consummation of a sale of all or substantially all of the assets of the DIP Borrowers under section 363 of the Bankruptcy Code, (iii) unless waived by the Bayside DIP Lenders in their sole discretion, the occurrence of an Event of Default after taking into effect all applicable grace periods, (iv) the acceptance in writing by any of the DIP Borrowers of any offer or bid for the purchase of, directly or indirectly, all or substantially all of the assets of any of the DIP Borrowers, or all of the equity of SSI or any subsidiary thereof, to a buyer that does not provide for the actual payment in full of the Bayside DIP Obligations (as defined in the Bayside DIP Credit Agreement) by no later than the Bayside DIP Maturity Date, or (v) unless waived by the Bayside DIP Lenders in their sole discretion, the date that any of the DIP Borrowers files a motion with the Bankruptcy Court for authority to proceed with the sale or liquidation of any of the DIP Borrowers (or any material portion of the assets or all of the equity of any DIP Borrower) without the consent of the Bayside DIP Lenders except pursuant to a proposed sale of all or substantially all of the DIP Borrowers’ assets, or all of the equity of SSI or any subsidiary thereof, to a buyer that provides for the actual payment in full of the Bayside DIP Obligations by no later than the Bayside DIP Maturity Date. (Bayside DIP Credit Agreement § 1.1)</p> <p><b><u>ABL DIP Facility:</u></b>  The earliest of (i) June 30, 2013, (ii) the date of a closing of a sale of all or substantially all of the Debtors’ assets pursuant to Section 363 of the Bankruptcy Code or (iii) the effective date of a plan in any of the Chapter 11 Cases. (ABL DIP Credit Agreement §§ 1.1, 8.12)</p>
<p><b>Use of DIP Facilities</b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  Proceeds of the loans under the Bayside DIP Facility will be used: (i) to provide working capital for the DIP Borrowers and DIP Guarantors (including without limitation, foreign affiliates guaranteeing the DIP Obligations) and other costs and expenses of administration of the Chapter 11 Cases, in each case in accordance with the Budget, (ii) to pay interest, fees and expenses in accordance with the Interim Order and the DIP Documents (including, for the avoidance of doubt, the fees and expenses of the Bayside DIP Lenders’ professionals, whether incurred pre-or postpetition), and (iii) upon entry of the Final Order, to roll up the Prepetition Term Loan Debt.</p> <p>The Debtors shall not use the proceeds of the Incremental DIP Term Facility or any of proceeds of the Term Loan Priority Collateral to (x) repay or prepay any of the Prepetition ABL Debt or the ABL Roll Up Obligations, (y) pay any Taxes (as defined in the Bayside DIP Credit Agreement) upon or as a result of the Disposition (as defined in the DIP Intercreditor Agreement) of the ABL Priority Collateral or (z) affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the liens, claims or rights in favor of the DIP Agents, any DIP Lender, the Prepetition Agents or any Prepetition Lender.</p>

	<p>(Interim Order ¶ 6(c); Bayside DIP Credit Agreement § 2.1(a))</p> <p><b><u>ABL DIP Facility:</u></b>  Proceeds of the loans under the ABL DIP Facility will be used: (i) to provide working capital for the DIP Borrowers and DIP Guarantors (including without limitation, foreign affiliates guaranteeing the DIP Obligations) and other costs and expenses of administration of the Chapter 11 Cases, in each case in accordance with the Budget, (ii) to pay interest, fees and expenses in accordance with the Interim Order and the DIP Documents (including, for the avoidance of doubt, the fees and expenses of the ABL DIP Lenders' professionals, whether incurred pre- or postpetition), (iii) upon entry of the Interim Order and subject to the challenge rights of parties set forth in paragraph 21 of the Interim Order, to discharge in full and irrevocably the ABL Roll Up Obligations.</p> <p>The Debtors shall not use the proceeds of the ABL DIP Facility or any of proceeds of the ABL Priority Collateral to (i) repay or prepay any of the Prepetition Term Loan Debt or Bayside Roll Up DIP Loan, (ii) pay any Taxes (as defined in the ABL DIP Credit Agreement) upon or as a result of the Disposition (as defined in the DIP Intercreditor Agreement) of Term Loan Priority Collateral or (iii) affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the liens, claims or rights in favor of the DIP Agents, any DIP Lender, the Prepetition Agents or any Prepetition Lender.</p> <p>(Interim Order ¶ 6(c); ABL DIP Credit Agreement § 6.11)</p>
<p><b>Entities with Interests in Cash Collateral</b>  <i>Bankruptcy Rule 4001(b)(1)(B)(i)</i></p>	<p>The Prepetition Term Loan Agent on behalf of the Prepetition Term Loan Lenders, and the Prepetition ABL Agent on behalf of the Prepetition ABL Lenders (as defined below). (Interim Order ¶ e.).</p>
<p><b>Use of Cash Collateral</b>  <i>Bankruptcy Rule 4001(b)(1)(B)(ii) and (iii) Local Rule 4001-2(a)(ii)</i></p>	<p>With the exception of any funds in a blocked account pursuant to the Prepetition ABL Documents (as defined in the Interim Order), to the extent any funds of the Debtors were on deposit with any Prepetition Secured Party as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Prepetition Secured Party immediately prior to the filing of the Debtors' chapter 11 petitions (regardless of whether, as of the time of filing, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the "<u>Deposited Funds</u>") are subject to rights of setoff, except as otherwise set forth in the DIP Intercreditor Agreement. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Prepetition Secured Party, giving rise to a secured claim pursuant to Bankruptcy Code sections 506(a) and 553.</p> <p>The Prepetition Secured Parties are obligated, to the extent provided in the Prepetition Loan Documents and subject to the terms of the DIP Intercreditor Agreement, as the case may be, to share the benefit of such liens and setoff rights with the other Prepetition Secured Parties that are party to or are otherwise beneficiaries of such documents.</p> <p>Pursuant to Bankruptcy Code section 552, any proceeds of the Prepetition Priority Collateral (as defined in the Interim Order) of the Prepetition Secured</p>

	<p>Parties (including, without limitation, the Deposited Funds or any other funds on deposit at the Prepetition Secured Parties or at any other institution as of the Petition Date) are Cash Collateral of the applicable Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a).</p> <p>Except on the terms and conditions of the Interim Order and the Prepetition Intercreditor Agreement, the Debtors shall be enjoined and prohibited from using the Cash Collateral absent further order of the Bankruptcy Court. The Debtors' right to use Cash Collateral, and the Prepetition Secured Parties' consent to use of Cash Collateral, shall terminate automatically on the Maturity Date (as such term is defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement, as applicable). (Interim Order ¶¶ 14, 15)</p>
<p><b>Interim Financing</b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  Up to an aggregate principal or face amount of \$25,000,000 of the \$50,000,000 commitment under the Incremental DIP Term Facility and upon satisfaction or waiver of the closing conditions set forth in the Bayside DIP Credit Agreement; <u>provided</u> that the DIP Borrowers shall be permitted to use on an interim basis only such amounts as are consistent with the Budget and subject to any limitations of borrowings under the applicable DIP Documents, as described more fully in ¶ f. of this Motion. (Interim Order ¶¶ f; 6(b))</p> <p><b><u>ABL DIP Facility:</u></b>  Up to an aggregate principal or face amount not to exceed \$175,000,000 under the ABL DIP Facility shall be made available upon entry of the Interim Order and upon satisfaction or waiver of the closing conditions set forth in the ABL DIP Credit Agreement; <u>provided</u> that the DIP Borrowers shall be permitted to use on an interim basis only such amounts as are consistent with the Budget and subject to any limitations of borrowings under the applicable DIP Documents, as described more fully in ¶ f. of this Motion. (Interim Order ¶¶ f; 6(b))</p>
<p><b>Interest Rates<sup>6</sup></b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  <u>Non-Default Rate:</u> LIBOR rate + 14% per annum, payable monthly in cash in arrears, calculated on an actual 360 day basis. LIBOR Floor: 1.50% (Bayside DIP Credit Agreement § 2.3).</p> <p><u>Default Rate:</u> + 3.00% per annum, calculated on an actual 360 day basis. (Bayside DIP Credit Agreement § 2.3)</p> <p><b><u>ABL DIP Facility:</u></b>  At the DIP Borrowers' election, the loans will bear interest at a rate per annum equal to:</p> <ul style="list-style-type: none"> <li>(i) Base Rate <u>plus</u> the Applicable Margin; or</li> <li>(ii) The LIBOR Rate <u>plus</u> the Applicable Margin. (ABL DIP Credit Agreement § 2.6)</li> </ul> <p><u>Base Rate:</u> The greatest of LIBOR plus 1%, the prime rate, or the Federal</p>

<sup>6</sup> The Debtors pay interest under the Prepetition Term Loan Credit Agreement (as defined below) at a rate of LIBOR plus 11%. At SSI's election, interest on the ABL accrues at a rate of either (i) LIBOR plus an applicable margin of 2.25% - 2.75% that is based on excess availability levels and certain other factors, or (ii) a base rate (equal to the greatest of LIBOR plus 1%, the prime rate, or the Federal Funds Rate plus ½%) plus an applicable margin of 1.25% - 1.75% that is also based on excess availability levels and certain other factors.



	<p>Funds rate plus ½% plus the Applicable Base Rate Margin, calculated on the basis of a year of 360 days and the actual number of days elapsed. (ABL DIP Credit Agreement § 1.1)</p> <p><u>LIBOR Rate:</u> LIBOR plus the Applicable LIBOR Margin, calculated on the basis of a year of 360 days and the actual number of days elapsed. (ABL DIP Credit Agreement § 1.1)</p> <p><u>Applicable Margin:</u> (i) 2.75 percentage points in the case of the Base Rate Loans and (ii) 3.75 percentage points in the case of the LIBOR Rate Loans. (ABL DIP Credit Agreement § 1.1)</p> <p><u>Default Rate:</u> + 3.00% annum, calculated on the basis of a year of 360 days and the actual number of days elapsed (which is the same as the applicable Default Rate in the Prepetition Revolving Loan Agreement) (ABL DIP Credit Agreement § 2.6(c))</p>
<p><b>Fees</b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  <u>Commitment Fee:</u> \$1,000,000, which represents 2.00% of the aggregate commitments under the Incremental DIP Term Facility. (Bayside DIP Credit Agreement § 2.10(j))</p> <p><u>Closing Fee:</u> \$500,000, which represents 1.00% of the aggregate commitments under the Incremental DIP Term Facility. (Bayside DIP Credit Agreement § 2.10(h))</p> <p><u>Unused Line Fee:</u> 1.00% per annum of the average daily difference between (a) the aggregate commitments of the Incremental DIP Term Facility and (b) the aggregate outstanding Loans under the Incremental DIP Term Facility, from and after the date of closing of the Bayside DIP Facility. Such unused Line Fee shall be payable in monthly arrears and on the Termination Date (as defined in the Bayside DIP Credit Agreement). (Bayside DIP Credit Agreement § 2.10(k))</p> <p><u>Commitment Termination Fee:</u> 3.00% of the aggregate commitments under the Bayside DIP Facility unless the Bayside DIP Facility is repaid and terminated in connection with the Bayside Sale. (Bayside DIP Credit Agreement § 2.10(l)).</p> <p><u>Administrative Agency Fee:</u> \$150,000 per annum and will be payable on the date of the closing of the Bayside DIP Facility and each anniversary thereof. (Bayside DIP Credit Agreement § 2.7)</p> <p><b><u>ABL DIP Facility:</u></b>  <u>Prepayment Premium:</u> \$500,000 unless such prepayment is made with the proceeds of any sale of all or substantially all of the Debtors' assets pursuant to section 363 of the Bankruptcy Code. (ABL DIP Credit Agreement § 2.10(d))</p> <p><u>Closing Fee:</u> \$2,625,000, payable ratably for the benefit of the ABL DIP Lenders, with \$1,750,000 payable upon entry of the Interim Order and \$875,000 payable upon entry of the Final Order. (ABL DIP Credit Agreement § 2.10(d))</p> <p><u>DIP Agent Arrangement Fee:</u> \$100,000. (ABL Fee Letter)</p>

	<p><b>Unused Line Fee:</b> 0.50% per annum times the unused portion of the ABL DIP Facility. (ABL DIP Credit Agreement § 1.1)</p> <p><b>Appraisal and Examination Fees:</b> (i) \$1,000 (or prevailing rate) per day, per examiner, plus out-of-pocket expenses for each field examination and (ii) fees or charges incurred by any DIP Agent, no less than \$1,000 per day per person, plus out-of-pocket expenses if it elects to employ the services of third Persons to--among other things, perform field examinations and to appraise the Collateral; provided, that so long as no Event of Default shall have occurred and be continuing, DIP Borrowers shall not be obligated to reimburse the DIP Agents for more than two (2) field examinations of DIP Borrowers and their Subsidiaries during any calendar year or more than two (2) appraisals of the Inventory during any calendar year. (ABL DIP Credit Agreement § 2.10(c)).</p>
<p><b>Approved Budget</b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p>A budget, approved by the DIP Borrowers and DIP Agents prior to commencement of the Chapter 11 Cases, projecting operations for the ensuing six-month period and including, without limitation, (i) a thirteen-week cash flow forecast, (ii) a six-month consolidated balance sheet, income statement and statement of cash flows, and (iii) income statements by Business Segment (as defined in the Bayside DIP Credit Agreement); such thirteen-week cash flow forecast to be updated (in substantially the same format as the prior thirteen-week cash flow forecast) monthly by the DIP Borrowers, submitted to the DIP Agents and, upon acceptance by the DIP Agents in their sole discretion, the prior budget, as modified by the updated thirteen-week cash flow forecast shall constitute the budget. (Bayside DIP Credit Agreement § 1.1; ABL DIP Credit Agreement § 1.1)</p>
<p><b>Milestones</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(vi)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  As described in section F of this Motion. The DIP Borrowers shall comply with certain milestones including:</p> <ul style="list-style-type: none"> <li>• Entry of Bid Procedures Order on or before February 8, 2013;</li> <li>• Deadline for submission of bids on or before March 19, 2013;</li> <li>• Auction Date to be held on or before March 25, 2013;</li> <li>• Sale Hearing to approve results of auction to be held on or before March 27, 2013;</li> <li>• Closing date for sale approved by the Bankruptcy Court to occur on or before April 11, 2013.</li> </ul> <p>(Bayside DIP Credit Agreement § 5.18)</p> <p><b><u>ABL DIP Facility:</u></b>  As described in section F of this Motion. The DIP Borrowers shall comply with certain milestones including:</p> <ul style="list-style-type: none"> <li>• The Auction Deadline shall have commenced on or before March 29, 2013 (or such later date as the ABL DIP Lenders shall agree);</li> <li>• The Bankruptcy Court shall have entered the Sale Order on or before March 31, 2013 (or such later date as the ABL DIP Lenders shall agree); and</li> </ul>

	<ul style="list-style-type: none"> <li>The closing date of the sale pursuant to the Sale Order shall have occurred on or before April 15, 2013 (or such later date as the ABL DIP Lenders shall agree).</li> </ul> <p>(ABL DIP Credit Agreement Schedule 5.16)</p>
Other Covenants	<p><b><u>Bayside DIP Facility:</u></b> Compliance with affirmative and negative covenants as are customary for debtor in possession financing, including, but not limited to:</p> <ul style="list-style-type: none"> <li>(i) <b>Budget Variance Test:</b> a budget variance test to be performed on certain line items set forth in the Approved Budget, including (a) the aggregate amount of actual receipts of the type set forth in the "Collections" line item not to be less than 25% in the first fiscal week of any fiscal month (the "<u>Single Test Week</u>") and not to be less than 20% in the two fiscal week period ending on the end of second, third, fourth and, if applicable, fifth fiscal week of each fiscal month (each, a "<u>Rolling Two Week Test Period</u>"), (b) the average amount of actual disbursements of the type under the "Payroll" line item not to exceed 10% of the average of the budgeted amount in any Rolling Two Week Test Period, (c) the aggregate amount of actual disbursements of the types set forth in certain line items such as "Debtor Professional Fees," "Professional Fees for Unsecured Creditors," "AP Disbursement" and "Total Disbursements" in any Single Test Week to exceed 15% of the budgeted amount or the average amount to exceed 10% of the average budgeted amount in any Rolling Two Week Test Period, and (d) the aggregate amount of actual net cash flows of the type in the "Net Cash Flow" line item to be less than 15% during any Single Test Week or the average amount of such net cash flows to be less than 15% of the average budgeted amount in any Rolling Two Week Test Period,</li> <li>(ii) a monthly call between members of the Debtors' management, the Bayside DIP Lenders, and the Bayside DIP Agent,</li> <li>(iii) retention of Alvarez &amp; Marsal as the Chief Restructuring Officer on terms and conditions acceptable to the Bayside DIP Agent, and</li> <li>(iv) milestones with respect to the Bayside Sale, as described below.</li> </ul> <p>(Bayside DIP Credit Agreement §§ 6.31, 5.19, 5.18, 5.1(aa))</p> <p><b><u>ABL DIP Facility:</u></b> Compliance with affirmative and negative covenants as are customary for debtor in possession financing, including, but not limited to a:</p> <ul style="list-style-type: none"> <li>(i) Budget Variance Test which is the same as agreed to under the Bayside DIP Facility;</li> <li>(ii) Certain milestones as described below; and</li> <li>(iii) Disgorgement: In the event that the Prepetition ABL Lenders are required to repay or disgorge to DIP Borrowers or any representatives of the DIP Borrowers' estate (as agents, with derivative standing or otherwise) all or any portion of the ABL Roll Up Obligations authorized and directed to be repaid pursuant to the DIP Orders, or any payment on account of the ABL Roll Up Obligations made to any Prepetition ABL Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code or any applicable state</li> </ul>

	<p>or provincial law, or any other similar provisions under any other state, federal or provincial statutory or common law (all such amounts referred to as the “<u>Avoided Payments</u>”), then, in such event, DIP Borrowers shall prepay the outstanding principal amount of the Revolving Loans (as defined in the ABL DIP Credit Agreement) in an amount equal to 100% of such Avoided Payments immediately upon receipt of the Avoided Payments by DIP Borrowers or any representative of the DIP Borrowers’ estate.</p> <p>(ABL DIP Credit Agreement §§ 2.4, 5.16, 6.15)</p>
<p><b>Liens and Priorities</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(i)</i>  <i>Local Rule 4001-2(a)(i)(D) and (G), 4001-2(a)(ii)</i></p>	<p>The DIP Lenders under the DIP Facilities shall be afforded certain liens and claims, including priming liens and superpriority claims on property of the estate, as described in section E of this Motion. (Interim Order ¶¶ 8, 10(b); Bayside DIP Credit Agreement § 4.34; ABL DIP Credit Agreement § 4.27)</p>
<p><b>Carve-Out</b></p>	<p>The “Carve-Out” means an amount sufficient to satisfy (a) all fees and expenses required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to 28 U.S.C. §§ 156(c) and 1930(a)(6) and (b) (i) unpaid allowed fees, expenses, and disbursements of the professionals for the Debtors and the Committee, if any (collectively, the “<u>Professionals</u>”) incurred and accruing after the occurrence and during the continuance of an Event of Default (as such term is defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) and delivery of a written notification by the ABL DIP Agent to the Bayside DIP Agent and the Prepetition Term Agent, or by the Bayside DIP Agent to the Prepetition ABL Agent and the ABL DIP Agent, of the occurrence of such Event of Default (as such term is defined in the ABL DIP Credit Agreement or Bayside DIP Credit Agreement) (the “<u>Carve-Out Notice</u>”), in an aggregate amount not in excess of \$500,000 and (ii) unpaid Professionals’ fees and expenses incurred and accruing prior to the delivery of a Carve-Out Notice and as allowed by the Bankruptcy Court and in such amounts (subject to any permitted variance under the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement) not in excess of the permitted line items for such amounts and for such periods as set forth in the budgets set forth in the DIP Credit Agreements and Carve-Out Report (as defined in the Interim Order) (clauses (i) and (ii), collectively, the “<u>Professionals’ Carve-Out</u>”); <u>provided that</u> (x) the dollar limitation in clause (b) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the delivery of a Carve-Out Notice in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to any Prepetition Agent or Prepetition Secured Lender and (y) nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i) and (ii) above. As among the DIP Collateral (as defined in the Interim Order), the Professionals’ Carve-Out, if and to the extent invoked pursuant to the Interim Order, shall be allocated one-half against and funded from the ABL Priority Collateral and one-half against and funded from the Term Loan Priority Collateral. The Debtors and their Chief Restructuring Officer (as defined in the ABL DIP Credit Agreement) shall provide to the DIP Agents a written report (the “<u>Carve-Out Report</u>”) every two weeks disclosing their then-current estimate of (1) the aggregate amount of unpaid professional fees, costs and expenses accrued or incurred by the Professionals through the date of the Carve-Out</p>

	<p>Report, and (2) projected fees, costs and expenses of the Professionals for the 30-day period following the date of such Carve-Out Report, taking into account projected interim payments during such period. Nothing herein shall be construed as consent by the DIP Agents to the allowance of any fees or expenses of the Professionals or shall affect the right of each DIP Agent to object to the allowance and payment of such fees, costs or expenses, or the right of the DIP Agents to the return of any portion of the Carve-Out that is funded under its respective DIP Documents with respect to fees and expenses for a Professional that are approved on an interim basis but are later denied on a final basis. (Interim Order ¶ 9; Bayside DIP Credit Agreement § 1.1; ABL DIP Credit Agreement § 1.1j)</p>
<p><b>Waiver of Rights</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(viii) and (x) Local Rule 4001-2(a)(i)(B) and (C)</i></p>	<p>The Debtors waive any and all claims, counterclaims, causes of action, defenses or setoff rights against each of the Prepetition Agents and each of the Prepetition Secured Lenders, and the time within which any non-debtor party in interest or the Committee may challenge the obligations to or liens of the Prepetition Agents and Prepetition Secured Lenders (each, a “<u>Lender Claim</u>”) will be limited to the earlier of (a) 75 days after the commencement of the Chapter 11 Cases (the “<u>Petition Date</u>”) and (b) with respect to the Committee, 60 days after the appointment of any Committee. Any party other than the Debtors may investigate claims and issues with respect to the Prepetition Loan Documents (the “<u>Investigation</u>”), provided that, in the case of the Committee, an aggregate expense for such Investigation shall not exceed \$25,000. Subject to entry of the Final Order, the Debtors shall be prohibited from asserting any claims under section 506(c) of the Bankruptcy Code against the Prepetition Agents, the Prepetition Secured Lenders, the DIP Agents, and the DIP Lenders. (Interim Order ¶¶ 4(d); 21(a))</p>
<p><b>Stipulations to Prepetition Liens and Claims</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(iii) Local Rule 4001-2(a)(i)(B)</i></p>	<p>The Debtors stipulate to the enforceability of the Prepetition Debt and the validity of the liens securing the Prepetition Debt (the “<u>Prepetition Liens</u>”). Except to the extent that a Lender Claim is timely commenced and results in the Bankruptcy Court ruling in favor of the plaintiff, the Prepetition Debt (as defined below) shall constitute allowed, secured claims for all purposes in the Chapter 11 Cases and any subsequent proceedings under the Bankruptcy Code, and the liens securing the Prepetition Debt shall be deemed legal, valid, perfected, enforceable and binding. The Prepetition Debt and Prepetition Security Interests (as defined in the Interim Order) shall not be subject to any further challenge by any party in interest seeking to exercise the rights of the Debtors’ estates, including, without limitation, any successor thereto (including any chapter 7 or chapter 11 trustee). (Interim Order ¶ 4; 21(b))</p>

<p><b>Adequate Protection</b>  <i>Bankruptcy Rule 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)</i></p>	<p>Adequate protection for the Prepetition Secured Lenders and Prepetition Agents includes (a) replacement security interests in and liens on all DIP Collateral, subject only to (i) the DIP Liens and any liens on the DIP Collateral that are senior to, or <i>pari passu</i> with, the DIP Liens and (ii) the Carve-Out, (b) allowed superpriority claims pursuant to section 507(b) of the Bankruptcy Code, (c) payment of unpaid prepetition interest and fees incurred in connection with the Prepetition Loan Agreements and payment of postpetition interest accruing under and in accordance with the Prepetition Loan Agreements, (d) payment of all fees and expenses, including reasonable fees and expenses for counsel and other consultants for the Prepetition Agents or Prepetition Secured Lenders, arising before and after the Petition Date (e) retention of expert consultants and financial advisors for purposes of monitoring the business of the Debtors and the value of the DIP Collateral and (f) access to financial and other reporting, as described more fully in section G of this Motion. (Interim Order ¶ 16)</p>
<p><b>Events of Default</b>  <i>Bankruptcy Rule 4001(c)(1)(B) Local Rule 4001-2(a)(ii)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  The Bayside DIP Credit Agreement contains certain customary Events of Default and other Events of Default, including, but not limited to, (i) a default under any sale process milestones, (ii) the filing of or confirmation of a plan of reorganization that does not provide for the repayment of all DIP Obligations in full in cash on the “Effective Date,” (iii) the Final Order is not entered within 30 days following entry of the Interim Order, (iv) conversion of any Chapter 11 Case to a chapter 7 case, (v) use or application of proceeds of DIP Collateral other than in accordance with cash management procedures and agreements acceptable to the Bayside DIP Agent, (vi) entry of an order precluding the Bayside DIP Agent or Prepetition Term Loan Agent (as defined in the Interim Order) to have the right to “credit bid,” and (vii) a representative of Alvarez &amp; Marsal is no longer Chief Restructuring Officer and the Company has not appointed a replacement Chief Restructuring Officer reasonably acceptable to the Bayside DIP Lenders within 7 days following such Event. (Bayside DIP Credit Agreement § 7.1(s))</p> <p><b><u>ABL DIP Facility</u></b>  The ABL DIP Credit Agreement contains certain customary Events of Default and other Events of Default, including, but not limited to, (i) the filing of or confirmation of a plan of reorganization that does not provide for the repayment of all DIP Obligations in full in cash on the “Effective Date,” (ii) conversion of any Chapter 11 Case to a chapter 7 case, and (iii) the Final Order is not entered within 30 days following entry of the Interim Order. (ABL DIP Credit Agreement § 8.12)</p>
<p><b>Waiver / Modification of Automatic Stay</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(iv)</i></p>	<p>The automatic stay shall be modified solely with respect to the DIP Facilities, to permit the DIP Agents and DIP Lenders to exercise (i) immediately upon the occurrence of an Event of Default, all rights and remedies under the applicable DIP Documents other than those rights set forth in clause (ii) and (ii) upon the occurrence and during the continuance of an Event of Default and subject to five business days’ prior written notice to the Debtors (with a copy to counsel to the Committee, if appointed, and to the U. S. Trustee), to the extent provided for in any DIP Document, the exercise of all rights and remedies by the DIP Agents and the DIP Lenders, with a full waiver by all parties in interest of all rights to contest such termination except with respect to the existence and/or continuance of an Event of Default. (Interim Order ¶ 12(c))</p>

<p><b>Waiver / Modification of Applicability of Nonbankruptcy Law Relating to Perfection or Enforceability of Liens</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(vii)</i></p>	<p>All liens granted for the benefit of the DIP Agents, the DIP Lenders, and the Prepetition Secured Parties, other than liens on Avoidance Actions, shall be valid, enforceable, non-avoidable, and perfected, effective as of the date of entry of the Interim Order, and no further action shall be required to effect such perfection, <u>provided that</u> all liens on Avoidance Actions shall be effective as of the date of entry of the Final Order. (Interim Order ¶ 18(a))</p>
<p><b>Roll-Up</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(ii)</i>  <i>Local Rule 4001-2(a)(i)(E)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  Upon entry of the Final Order, (a) all unpaid amounts in respect of loans under the Prepetition Term Loan Credit Agreement held by Term Loan Lenders, (including, for the avoidance of doubt, the Early Payment Fee, as defined in the Prepetition Term Loan Credit Agreement), plus accrued and unpaid interest thereon through such date and (b) unpaid fees, costs and expenses in respect thereof (collectively, the “<u>Term Loan Expenses</u>,” and, together with clause (a), the “<u>Term Loan Obligations</u>”) shall, pursuant to a cashless exchange, be refinanced and converted into Term Loans pursuant to the Bayside DIP Facility. Amounts repaid or prepaid in respect of loans under the Prepetition Term Loan Credit Agreement may not be reborrowed. (Interim Order ¶ 6(b); Bayside DIP Credit Agreement § 2.1(b))</p> <p><b><u>ABL DIP Facility:</u></b>  Upon entry of the Interim Order and subject to the challenge rights of parties as set forth in paragraph 21 of the Interim Order, all unpaid amounts owing in respect of loans under the Prepetition ABL Credit Agreement be, plus accrued and unpaid interest thereon through such date and unpaid fees, costs and expenses in respect thereof, shall be repaid in full with the proceeds of the ABL DIP Facility, and any extant letters of credit and Bank Product Obligations (as defined in the Prepetition ABL Credit Agreement) shall be deemed to be issued or otherwise incurred under the ABL DIP Credit Agreement (the “<u>ABL Roll Up Obligations</u>”). (Interim Order ¶ 6(b); ABL DIP Credit Agreement § 2.4(e)(viii))</p>
<p><b>Indemnification</b>  <i>Bankruptcy Rule 4001(c)(1)(B)(ix)</i></p>	<p>The DIP Obligors agree to certain indemnities as described in ¶ 19(a) of the Interim Order. (Interim DIP Order ¶ 19(a); Bayside DIP Credit Agreement §8.7; ABL DIP Credit Agreement § 10.3)</p>
<p><b>Conditions to Borrowing</b>  <i>Bankruptcy Rule 4001(c)(1)(B)</i>  <i>Local Rule 4001-2(a)(ii)</i></p>	<p><b><u>Bayside DIP Facility:</u></b>  Conditions precedent to initial borrowings under the Bayside DIP Facility include, among other things, the following, in each case in form and substance satisfactory to the Bayside DIP Agent: (i) each of the ABL DIP Documents shall have been duly executed and delivered by the respective parties thereto and shall be in full force and effect; (ii) absence of any Material Adverse Event (as defined in the Bayside DIP Credit Agreement) or material pending or threatened litigation, proceeding, order or claim except as specified in the Bayside DIP Credit Agreement, (iii) absence of any Default or Event of Default, (iv) the proceeds of the Bayside DIP Loans (as defined in the Bayside DIP Credit Agreement) are applied in accordance with the Bayside DIP Credit Agreement and all transactions related to the Bayside DIP Loans have been consummated or will be consummated simultaneously with the transactions under the Bayside DIP Facility (the “<u>Related Transactions</u>”), (v) the Bayside DIP Agent is satisfied with the corporate structure, ownership and management of the DIP Obligors, (vi) payment by the DIP Borrowers of all fees and expenses owing and payable to the Bayside DIP Agent and Bayside DIP</p>

Lenders under the Bayside DIP Facility have been satisfied, (vii) a cash management system has been entered into and cash management accounts have been established, (viii) the DIP Borrowers and Bayside DIP Agent have agreed upon the Budget, (ix) the Prepetition ABL Lenders will have entered into ABL DIP Credit Documents in a form acceptable to the Bayside DIP Agent that when combined with the ABL DIP Roll Up Obligations will provide the DIP Borrowers with ABL DIP financing not to exceed \$175 million and that funding under the ABL DIP Credit Agreement will be subject to the stated borrowing base currently in effect in the ABL DIP Credit Agreement, (x) all of the First Day Orders shall have been entered in the Chapter 11 Cases, (xi) the Bayside DIP Agent shall have received a certificate from the Secretary or an Assistant Secretary of each DIP Obligor attesting and attaching (a) a complete and correct copy of the corporate resolution authorizing the execution, delivery and performance of each Bayside DIP Facility Document to which such person is a party, certified as of the Closing Date, (b) the names, titles and signatures of the officers of such person authorized to execute and deliver each Bayside DIP Facility Document, and (c) a complete and correct copy of a certificate of organization, good standing and other related governing documents, as amended, modified or supplemented (in effect as of the Closing Date), (xii) the executed and favorable legal opinions of counsel for the DIP Obligors addressing such matters as the Bayside DIP Agent reasonably requests, (xiii) each DIP Obligor shall have received all consents and authorizations required to enter into the Bayside DIP Credit Agreement, (xiv) the Bayside DIP Agent shall have received all applicable documentation and information required under applicable "know your customer" and anti-money laundering rules and regulations. (Bayside DIP Credit Agreement §3.1)

**ABL DIP Facility:**

Conditions precedent to initial borrowings under the ABL DIP Facility include the following, in each case subject to the satisfaction of each Lender: (i) the Closing Date shall occur on or before January 29, 2013, (ii) the ABL DIP Agent shall have received a letter authorizing the agent to file the appropriate financing statements as necessary to perfect the security interests in the ABL Loan Documents, (iii) the ABL DIP Agent shall have received, in form and substance satisfactory to the Co-Collateral Agents, execute agreements related to the ABL DIP Credit Agreement, including (a) the Fee Letter (as defined therein), (b) the guaranty and security agreement, (c) the DIP Intercreditor Agreement (as defined in the Interim Order), (iv) the ABL DIP Agent shall have received shall have received a certificate from the Secretary of each DIP Obligor attesting and attaching (a) a complete and correct copy of the corporate resolution authorizing the execution, delivery and performance of each ABL DIP Facility Document to which such person is a party, certified as of the Closing Date, (b) the names, titles and signatures of the officers of such person authorized to execute and deliver each ABL DIP Facility Document, and (c) a complete and correct copy of a certificate of organization, good standing and other related governing documents, as amended, modified or supplemented (as of the Closing Date), (v) the executed legal opinions of counsel for the DIP Obligors, (vi) the ABL DIP Agent shall have received projections of borrowings for the 1-year period following the Closing Date, (viii) the DIP Borrowers shall have paid all Lender Group Expenses (as defined in the ABL DIP Credit Agreement) incurred in connection with the transactions pursuant to the ABL DIP Facility, (ix) the ABL DIP Agent shall have received documentation of the post-Petition Date Bayside DIP Facility and evidence that the DIP Borrowers have received proceeds under the Bayside DIP Credit Agreement in an aggregate principal amount of not less than \$15,000,000,



	(x) each DIP Obligor shall have received all consents and authorizations required to enter into the ABL DIP Credit Agreement, (xi) the DIP Borrowers and ABL DIP Agent shall have agreed upon the initial Budget, (xii) all of the First Day Orders shall have been entered in the Chapter 11 Cases, (xiii) the DIP Borrowers shall have entered into the Bayside DIP Credit Agreement and shall not be in default thereunder and (xiv) the ABL DIP Agent shall have received such other documents and instruments as shall be reasonably required in connection with the ABL DIP Credit Agreement and the transactions contemplated hereby. (ABL DIP Credit Agreement §3.1)
<b>Liens on Avoidance Actions</b> <i>Bankruptcy Rule</i> <i>4001(c)(1)(B)(xi)</i> <i>Local Rule 4001-2(a)(i)(D)</i>	Subject to entry of the Final Order, the DIP Agents, for the benefit of the DIP Lenders (as applicable), shall be granted liens on the Avoidance Actions and the proceeds thereof. (Interim Order ¶ 8; Bayside DIP Credit Agreement § 1.1); ABL DIP Credit Agreement § 1.1).

### **KEY PROVISIONS TO BE HIGHLIGHTED PURSUANT TO LOCAL RULE 4001-2**

13. The Debtors believe that the following provisions of the DIP Credit Agreements or the Interim Order must be highlighted pursuant to Local Rule 4001-2:

- a. **Stipulations to Validity, Perfection, and Amount of Prepetition Liens; Waiver of Prepetition Claims.** Although the Interim Order includes certain stipulations by the Debtors with respect to the enforceability of the Prepetition Debt (as defined in the Interim Order), the validity of the Prepetition Liens, and certain waivers by the Debtors of rights and causes of action against the Prepetition Agents and the Prepetition Secured Lenders, the Interim Order reserves the rights of non-debtor parties in interest, including any Committee, if appointed, to initiate a Lender Claim by the earlier of (a) seventy-five (75) days after the Petition Date, and (b) with respect to the Committee, sixty (60) days after the appointment of any Committee. (Interim Order ¶ 21(a))
- b. **Liens on Avoidance Actions.** Upon entry of the Final Order, the DIP Obligors shall grant the Bayside DIP Agent, for the benefit of the Bayside DIP Lenders, and the ABL DIP Agent, for the benefit of the ABL DIP Lenders, liens on Avoidance Actions and the proceeds thereof. (Interim Order ¶ 8; Bayside DIP Credit Agreement § 1.1); ABL DIP Credit Agreement § 1.1)
- c. **Waiver of Section 506(c) Surcharge.** Upon entry of the Final Order, except to the extent of the Carve-Out, the Debtors shall waive the ability to charge costs and expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom against or recovered from the DIP Collateral, the Prepetition Collateral or the Cash Collateral without the prior

written consent of the DIP Agents or the Prepetition Agents, as applicable. (Interim Order ¶ 13)

- d. **Roll-Up of Prepetition Debt.** Upon entry of the Final Order, the Bayside DIP Facility shall be used to pay in full all unpaid amounts in respect of loans under the Prepetition Term Loan Credit Agreement held by Term Loan Lenders (including, for the avoidance of doubt, the Early Payment Fee), plus accrued and unpaid interest thereon through such date, and unpaid fees, costs and expenses and such amounts shall, pursuant to a cashless exchange, be refinanced and converted into Term Loans under the Bayside DIP Facility.

Upon entry of the Interim Order and the closing of the ABL DIP Facility, an ABL DIP Facility advance shall be used to fully repay all ABL Roll Up Obligations. (Interim Order ¶ 6(b), Bayside DIP Credit Agreement § 21(b); ABL DIP Credit Agreement § 2.4(c)(viii))

### **BACKGROUND**

14. On the Petition Date, each of the Debtors filed a voluntary petition with this Court for relief under chapter 11 of the Bankruptcy Code. The Debtors continue to manage and operate their businesses as debtors in possession under sections 1107 and 1108 of the Bankruptcy Code.

15. No trustee, examiner or official committee has been appointed in the Chapter 11 Cases.

16. The Company is the largest supplier of educational products and equipment to the pre-kindergarten through twelfth grade (“preK-12”) market in the United States. It offers more than 75,000 different items for sale to public school districts, individual private and parochial schools, educators and individual consumers. These products range from basic school supplies, such as markers and erasers, to furniture and proprietary branded products such as agendas and curriculum programs. By virtue of its breadth of offerings, the Company is able to provide substantially all of the supplies and products that a school district or educator

may need. The Company estimates that, in fiscal year 2012, it supplied approximately 70% of the estimated 130,000 schools in the United States, and thereby reached a majority of the 3.8 million teachers at those schools.

17. Information regarding the Debtors' businesses, their capital and debt structure, the events leading to the filing of the Chapter 11 Cases, and the Debtors' efforts to obtain debtor-in-possession financing is contained in the First Day Declaration of Gerald T. Hughes in Support of Chapter 11 Petitions and First Day Relief (the "First Day Declaration"). Information regarding the Debtors' efforts to obtain debtor-in-possession financing is also contained in the Declaration of Agnes K. Tang in Support of this Motion (the "Tang Declaration").<sup>7</sup> As described in the First Day Declaration and the Tang Declaration, the Debtors respectfully state as follows.<sup>8</sup>

**A. Prepetition Secured Indebtedness**

18. As described in the First Day Declaration, as of the Petition Date, SSI had approximately \$139.6 million in outstanding principal secured indebtedness, consisting of a revolving credit facility and a term loan which the Company entered into on May 22, 2012 to repay the existing secured indebtedness. These prepetition loans are described immediately below.

19. SSI's revolving senior secured asset-based credit facility (the "ABL") is provided under that certain Credit Agreement (as amended, modified, and/or restated from time to time, the "Prepetition ABL Credit Agreement") between SSI and certain of its domestic

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<sup>7</sup> The First Day Declaration and the Tang Declaration are being filed substantially contemporaneously with this Motion and are incorporated herein by reference.

<sup>8</sup> Unless otherwise specified, capitalized terms used but not defined in this Motion shall have the meanings ascribed to them in the First Day Declaration and the Tang Declaration.

subsidiaries, as borrowers, the Prepetition ABL Lenders, and Wells Fargo Capital Finance, LLC, as administrative agent ("Wells Fargo" or the "Prepetition ABL Agent"). The Prepetition ABL Credit Agreement provides up to \$200 million in revolving credit and matures on September 30, 2014, which maturity date may be extended if the Company has refinanced its Convertible Notes (as described and defined below) by such date. As of the Petition Date, the aggregate amount outstanding under the Prepetition ABL Credit Agreement was approximately \$47.62 million, inclusive of related letters of credit.

20. Each of SSI's domestic operating subsidiaries, Bird-in-Hand Woodworks, Inc., Califone International, Inc., Childcraft Education Corp., ClassroomDirect.com, LLC, Delta Education, LLC, Premier Agendas, Inc., and Sportime, LLC, is a borrower under the Prepetition ABL Credit Agreement along with SSI; the remaining Debtor subsidiaries are guarantors of the borrowers' obligations under the Prepetition ABL Credit Agreement.<sup>9</sup> Obligations under the Prepetition ABL Credit Agreement are secured by a first-priority security interest in substantially all of the assets of SSI and its subsidiary borrowers and guarantors. However, pursuant to an intercreditor agreement between the Prepetition ABL Agent and the Prepetition Term Loan Agent (as defined below) dated as of May 22, 2012 (as amended, modified, and/or restated from time to time, the "Prepetition Intercreditor Agreement"),<sup>10</sup> the Prepetition ABL Lenders have (i) a first-priority security interest in substantially all of the working capital assets of SSI and its subsidiary borrowers and guarantors, including accounts receivable, inventory, instruments, chattel paper, contracts, cash, deposit accounts, guaranties, insurance, letters of credit, commercial tort claims, general intangibles other than the intellectual property and investment

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<sup>9</sup> Select Agendas, Inc., a Nova Scotia unlimited liability company, is also a guarantor of SSI's obligations under the Prepetition ABL Credit Agreement; it is not, however, a debtor in these Chapter 11 Cases.

<sup>10</sup> A copy of the Prepetition Intercreditor Agreement is attached hereto as Exhibit D.

property (the “ABL Priority Collateral”), and (ii) a second-priority security interest in all other assets, including real property, intellectual property, equipment and fixtures, and equity interests (the “Term Loan Priority Collateral,” and, together with the ABL Priority Collateral, the “Prepetition Collateral”), subordinate only to the first-priority security interest of the Term Loan Lenders (as described below). At the Company’s election, interest on the ABL accrues at a rate of either (i) LIBOR plus an applicable margin of 2.25% - 2.75% that is based on excess availability levels and certain other factors, or (ii) a base rate (equal to the greatest of LIBOR plus 1%, the prime rate, or the Federal Funds Rate plus ½%) plus an applicable margin of 1.25% - 1.75% that is also based on excess availability levels and certain other factors.

21. SSI’s term loan is provided under that certain Credit Agreement (as amended, modified, and/or restated from time to time, the “Prepetition Term Loan Credit Agreement,” and, together with the Prepetition ABL Credit Agreement, the “Prepetition Loan Agreements”) among SSI and certain of its domestic subsidiaries, as borrowers, and Bayside Finance, LLC, as administrative agent, collateral agent and lender (“Bayside” or the “Prepetition Term Loan Agent,” and, together with the Prepetition ABL Agent, the “Prepetition Agents”). Bayside is the sole Term Loan Lender. The Prepetition Term Loan Credit Agreement provides up to \$70 million in term loan credit and matures on October 31, 2014, which maturity date also may be extended if the Company has refinanced its Convertible Notes by such date. As of the Petition Date, the aggregate principal amount outstanding under the Prepetition Term Loan Credit Agreement was \$92,054,001.06 (including the Early Payment Fee) plus \$2,606,866.33 in accrued and unpaid interest.

22. Each of SSI’s domestic operating subsidiaries, Bird-in-Hand Woodworks, Inc., Califone International, Inc., Childcraft Education Corp., ClassroomDirect.com, LLC, Delta

Education, LLC, Premier Agendas, Inc., and Sportime, LLC, is a borrower under the Term Loan along with SSI; the remaining Debtor subsidiaries are guarantors of these borrowers' obligations under the Prepetition Term Loan Credit Agreement.<sup>11</sup> Obligations under the Prepetition Term Loan Credit Agreement are secured by liens on substantially all of the assets of SSI and the subsidiary borrowers and guarantors. Pursuant to the Prepetition Intercreditor Agreement, Bayside has (i) a second-priority security interest in the ABL Priority Collateral, subordinate only to the first-priority security interest of the Prepetition ABL Lenders, and (ii) a first-priority security interest in the Term Loan Priority Collateral. Interest on the Term Loan accrues at a rate of LIBOR plus 11%.

23. Both the Prepetition ABL Credit Agreement and the Prepetition Term Loan Credit Agreement impose a variety of financial ratio covenants and other standard terms, including originally a \$20.0 million minimum liquidity covenant that is tested on a monthly basis (the "Minimum Liquidity Covenant"). In addition, the Prepetition Term Loan Credit Agreement requires the payment of a make-whole premium of approximately \$25,000,000 due in the event of a prepayment of the debt during certain periods or upon acceleration of the debt due to an event of default, which premium, as discussed more fully below, became due and payable in the amount of \$25,054,001.06 upon the Prepetition Term Loan Agent's acceleration of the obligations under the Prepetition Term Loan Credit Agreement on January 4, 2013.

**B. Need for DIP Financing and Efforts to Obtain DIP Financing**

24. As discussed more fully in the First Day Declaration, since 2008, the Company has experienced a decrease in revenue. See First Day Declaration, ¶¶ 28-33. The net

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<sup>11</sup> Select Agendas, Inc., a Nova Scotia unlimited liability company, is also a guarantor of the borrowers' obligations under the Prepetition Term Loan Credit Agreement; it is not, however, a debtor in these Chapter 11 Cases.

result of the economic downturn, coupled with the Company's leverage and liquidity positions, has been a material decrease in the Company's financial performance. The Company's discretionary and supplement business lines in particular have suffered extensive downturns. In fiscal year 2012, the Company reported total revenues of \$731.9 million and gross profits of \$283.0 million, compared to revenues of \$1.087 billion and gross profits of \$461.2 million in fiscal year 2008.

25. To combat this downturn in revenues, the Company has implemented various measures since 2008 to reduce overall costs, improve business efficiencies, and improve existing financial arrangements. See First Day Declaration, ¶¶34-36. Yet despite these efforts, pressure has continued to build on the Company's ability to maintain acceptable levels of liquidity. Accordingly, since entry into the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement in May 2012, the Debtors' management team has worked to address certain risks presented by a continued deterioration of the Company's liquidity position, including, in particular, the possibility that a liquidity shortfall might cause the Company to breach the Minimum Liquidity Covenant in the Prepetition ABL Credit Agreement and Prepetition Term Loan Credit Agreement at the end of calendar year 2012. These efforts have included a continuation of the strategies outlined immediately above, as well as the pursuit of additional short term and more comprehensive strategic and financial solutions to the Company's liquidity situation. See First Day Declaration, ¶ 37-40.

26. As part of this process, in late October 2012, the Company engaged PWP as financial advisors, and in November 2012, engaged Paul, Weiss, Rifkind, Wharton & Garrison LLP, as its legal advisors. With the assistance of PWP, during November 2012 through January 2013, the Company explored multiple strategic and financial alternatives, including

amendments of the Debtors' credit facilities, the sale of all or specific portions of the Company's operations (including the sale of certain business segments that were already being considered), new debt and/or new equity infusions, a debt for equity exchange, and a comprehensive restructuring of the Company's balance sheet. In connection with such efforts, PWP contacted 29 financial parties, including banks and private equity investors resulting in the Company's entry into 22 non-disclosure agreements.<sup>12</sup>

27. A primary component of such efforts has been discussions with the Company's key stakeholders, including (i) the Prepetition Agents for each of the Prepetition Term Loan Credit Agreement and Prepetition ABL Credit Agreement, (ii) an *ad hoc* group of Convertible Noteholders (the "Convertible Noteholder Group"), and (iii) certain large equity holders. This process involved extensive negotiations between legal and financial advisors for each of these parties and the Company's advisors, as well as a number of management presentations and other meetings where members of the Company's senior management team met in-person with the Prepetition ABL Lenders, Bayside, members of the Convertible Noteholder Group and third parties. To facilitate these discussions, with the assistance of PWP, the Prepetition Secured Lenders, the Convertible Noteholder Group, and certain key equity holders and third parties conducted due diligence about the Company and its business operations on a confidential basis. In addition to pursuing these potential alternatives, PWP continued to have communications with a number of third-parties in connection with obtaining postpetition financing.<sup>13</sup>

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<sup>12</sup> See Tang Declaration ¶ 15.

<sup>13</sup> See Tang Declaration ¶ 16.



28. The urgency to find an immediate comprehensive liquidity solution, including postpetition financing in the event the Company and its subsidiaries would need to commence chapter 11 cases, increased at the end of December 2012. As described in the First Day Declaration, on January 4, 2013, the Company reported that it was not in compliance with the month-end Minimum Liquidity Covenant under the Prepetition ABL Credit Agreement and the Prepetition Term Loan Credit Agreement, thus triggering events of default under the Prepetition ABL Credit Agreement and the Prepetition Term Loan Credit Agreement. As a result, pursuant to the terms of the Prepetition Term Loan Credit Agreement, on January 4, 2013, the Prepetition Term Loan Agent accelerated the debt and the amounts outstanding under the Prepetition Term Loan Credit Agreement immediately became due and payable.

29. On January 4, 2013, both the Prepetition ABL Lenders and the Term Loan Lenders entered into forbearance agreements (the “Forbearance Agreements”) with respect to these events of default until the earlier of February 1, 2013 and certain other specified events. To provide the Company with sufficient liquidity during the one-month forbearance period to continue to pursue a comprehensive solution to their liquidity needs, the Forbearance Agreements, among other things, reduced the Minimum Liquidity Covenant in the ABL and Prepetition Term Loan Credit Agreements from \$20.0 million to \$3.0 million.<sup>14</sup>

30. In connection with these efforts, the Company logically identified the Prepetition Secured Lenders as the most likely sources of postpetition financing that could be obtained within the time period imposed by the Forbearance Agreements and the Company’s rapidly dwindling liquidity position, particularly given the Prepetition Secured Lenders’

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<sup>14</sup> As set forth in the First Day Declaration, in accordance with the chief restructuring officer requirement in the Forbearance Agreements, the Company retained Thomas E. Hill from Alvarez & Marsal North America, LLC (“A&M”) to serve as its Chief Restructuring Officer. See First Day Declaration, ¶43.

respective liens on substantially all of the Company's assets, history with the Company, and involvement over the past several months with the Company's restructuring efforts. Indeed, in light of the substantially fully encumbered nature of the Company's assets, the prospect of obtaining postpetition financing from a third party lender outside of the Prepetition Lender base would have contemplated one of four difficult alternatives: (a) to find a lender willing to extend postpetition financing on an unsecured basis, (b) to find a lender willing to extend postpetition financing with priority junior to that of the Prepetition Secured Parties, (c) to obtain postpetition financing that primed the liens of the Prepetition Secured Parties without such parties' consent, or (d) to arrange a refinancing of all of the Company's ABL Roll Up Obligations and Term Loan Obligations. Nonetheless, the Company and its advisors approached third parties to ascertain whether or not such third parties would be willing to provide postpetition financing.<sup>15</sup>

31. The results of these efforts were debtor-in-possession financing proposals from Bayside, Wells Fargo, the Convertible Noteholder Group, and a third-party bank. None of these proposals contemplated postpetition financing that would provide the Debtors with sufficient liquidity to fund these Chapter 11 Cases, including on an unsecured or non-consensual priming basis or on a priority junior to that of the Prepetition Secured Parties.

32. The postpetition financing proposal from the Term Loan Lenders was conditioned on certain milestones, including a sale of substantially all of the Company's assets by way of a section 363 auction process, with Bayside or its affiliate serving as the stalking horse

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<sup>15</sup> See Tang Declaration ¶¶ 19-20.

bidder. As part of this proposal, the DIP Lenders would provide debtor-in-possession financing to the Debtors to fund their Chapter 11 Cases.<sup>16</sup>

33. After reviewing each of the proposals, the Company determined in consultation with its advisors, including PWP, that under the circumstances, including the Company's liquidity position, the upcoming forbearance deadline of February 1, 2013, the current debtor-in-possession financing market, and the results of recent conversations with a variety of stakeholders and other parties, the DIP Facilities provided by Bayside and the Prepetition ABL Lenders are the best options available to the Debtors to provide them with sufficient liquidity to continue to operate their business operations and to conclude their restructuring. The Company also determined that the other proposals received, including from the Convertible Noteholder Group and the third-party bank, were inferior in comparison to the postpetition financing proposals of Bayside and ABL DIP Lenders, including amongst other things, because they did not provide sufficient liquidity to fund the Chapter 11 Cases, and thus, the Company concluded there were no viable alternatives to the DIP Facilities.

34. The DIP Facilities are premised on a consensual priming of the Prepetition ABL Lenders' liens and the Term Loan Lenders' liens on the ABL Priority Collateral and the Term Loan Priority Collateral, respectively. In addition to providing the Company with the necessary liquidity, the DIP Facilities avoid the need for a lengthy and uncertain priming dispute. As such, they represent the best postpetition financing option available to the Company.

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<sup>16</sup> The Convertible Noteholder Group provided its proposal for postpetition financing under Rule 408 of the Federal Rules of Evidence and the only other proposal was provided on a confidential basis. As a result, the Debtors are unable to describe the terms of such proposals; however, each of the proposals of the Convertible Noteholder Group and the third-party bank were on inadequate terms and failed to provide the Debtors with sufficient liquidity. See Tang Declaration n.4.

35. The following factors, among others, weighed in favor of the DIP Facilities offered by Bayside and the Wells Fargo: (i) the Company's familiarity and prior experience with Bayside and Wells Fargo, (ii) the execution risk, (iii) certainty of closing, and (iv) likelihood of flexibility and supportiveness in the future.

36. Accordingly, in light of their imminent liquidity needs, the Debtors determined that it would not be prudent or productive to incur further costs or devote additional resources to soliciting interest from potential third party sources of postpetition financing. Rather, SSI and its advisors focused their efforts on finalizing and documenting the DIP Facilities proposed by Bayside and Wells Fargo along with the stalking horse agreement proposed by Bayside.

37. Throughout the weeks leading up to the Petition Date, the Company and Bayside and Wells Fargo engaged in extensive good faith and arm's length negotiations with respect to the terms and conditions of the postpetition financing, and simultaneously with Bayside, the terms and conditions of the stalking horse agreement. The result of such good faith and arms' length negotiations was the execution of the DIP Credit Agreements submitted to the Bankruptcy Court for approval pursuant to this Motion.

**C. The Debtors' Liquidity Needs to Effectuate the Sale and Administer the Chapter 11 Cases**

38. In light of the conditions imposed by the proposed DIP Facilities, including a sale of substantially all of the Company's assets within 73 days after the Petition Date, the Company, with the assistance of A&M and PWP, analyzed the amount of cash necessary for the Debtors to (i) implement the sale process required by the Bayside DIP Facility and (ii) to operate the Debtors' businesses in the ordinary course. In determining the amount of liquidity needed for this purpose, A&M conferred with certain of the Company's operations and

management personnel with respect to anticipated cash receipts and disbursements. The Company, in consultation with A&M and PWP, ultimately determined that the Debtors would require approximately \$50,000,000 in postpetition financing during the Chapter 11 Cases. To that end, the Debtors, in consultation with A&M and PWP, provided the DIP Agents with a budget forecasting projected cash flow for the thirteen (13) week period following the Petition Date, which has been approved in form and substance by the DIP Agents (as may be subsequently amended, modified, and updated from time to time in accordance with the DIP Credit Agreements, the "Budget").<sup>17</sup>

39. Upon entry of the Interim Order and the closing of each of the DIP Facilities (the "Closing Date"), up to an aggregate principal or face amount not to exceed \$175,000,000 pursuant to the ABL DIP Facility and \$25,000,000 of the \$50,000,000 Incremental DIP Term Facility will be made available. However, during the period from the Closing Date through entry of the Final Order, the DIP Borrowers shall be permitted to use only such amounts as are consistent with the Budget and the DIP Credit Agreements.

40. As reflected in the Budget, the Debtors have an immediate need during the interim period to access the full amount available under the ABL DIP Facility and at least \$25,000,000 under the Bayside DIP Facility during the period from the Petition Date through the entry of the Final Order approving the DIP Facilities. Upon entry of the Final Order, the Debtors will need the balance of the Bayside DIP Facility, as well as continued access to the full amount available under the ABL DIP Facility, for the remainder of these Chapter 11 Cases. Absent the ability to access the proceeds of the financing available under each of the DIP Facilities as set forth above pending entry of the Final Order, the Debtors would not have sufficient cash on hand

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<sup>17</sup> The Budget is attached hereto as Exhibit G.

to administer the Chapter 11 Cases, pay their employees, satisfy essential postpetition obligations as they come due, promptly pursue consummation of a sale in accordance with the conditions of the Bayside DIP Facility, preserve the value of their assets and satisfy the proposed adequate protection payments to the Prepetition Secured Parties. Accordingly, access to funds on an interim basis is necessary to avoid immediate and irreparable harm to the Debtors' estates.

41. Furthermore, as evidenced by the Budget, the DIP Facilities, which are the Debtors' only sources of postpetition financing, are appropriately sized given the Debtors' projected liquidity pending completion of the sale process. The Debtors believe that the Budget is feasible, includes all expenses that the Debtors believe they will incur after the Petition Date and will provide the Debtors with sufficient liquidity to support the Debtors' pursuit of the sale process and satisfy essential financial obligations during the Chapter 11 Cases, all in order to maximize the value of the Debtors' estates for the benefit of parties in interest.

**D. Existing Limitations on DIP Financing**

42. As discussed above, the respective lien priorities of the Term Loan Lenders and the lenders under the Prepetition ABL Credit Agreement (collectively, the "Prepetition ABL Lenders," and together with the Term Loan Lenders, the "Prepetition Secured Lenders") are governed by the Prepetition Intercreditor Agreement.<sup>18</sup> In addition, the Prepetition Intercreditor Agreement limits the Prepetition Secured Lenders' exercise of rights or remedies with respect to any Prepetition Collateral on which they hold a second lien, and imposes certain conditions and restrictions on the Prepetition Secured Lenders' respective rights to seek adequate protection and provide debtor in possession financing to the Debtors. In pertinent part, pursuant to the Prepetition Intercreditor Agreement:

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<sup>18</sup> This summary of the Prepetition Intercreditor Agreement is provided for illustrative terms only, and is qualified in its entirety by reference to the Prepetition Intercreditor Agreement.

- The Term Loan Lenders agree that they will not provide the Debtors with any postpetition financing under section 364(d) of the Bankruptcy Code that is secured by a lien senior to or *pari passu* with the first liens of the Prepetition ABL Lenders on the ABL Priority Collateral. See § 6.2(a).
- The Prepetition ABL Lenders agree that they will not provide the Debtors with any postpetition financing under section 364(d) of the Bankruptcy Code that is secured by a lien senior to or *pari passu* with the first liens of the Term Loan Lenders on the Term Loan Priority Collateral. See § 6.2(b).
- Subject to the satisfaction of the “ABL DIP Financing Conditions” (as defined in the Prepetition Intercreditor Agreement), the Prepetition Term Loan Agent agrees that it will not object to the Prepetition ABL Agent’s consent to the use of Cash Collateral constituting ABL Priority Collateral or consent to any person, including any of the Prepetition ABL Lenders, to provide postpetition financing to the Debtors that is secured by liens on the ABL Priority Collateral. The ABL DIP Financing Conditions require, among other things:
  - (a) that (i) the Prepetition Term Loan Agent retains its liens with respect to the Prepetition Collateral that existed as of the date of the commencement of a grantor’s insolvency proceeding, (ii) the Prepetition Term Loan Agent’s lien as to the Term Loan Priority Collateral remain senior and prior to the liens of the Prepetition ABL Agent with respect to such collateral, and (iii) as to Term Loan Priority Collateral acquired by the applicable grantor after the commencement of such grantor’s insolvency proceeding, if a lien is granted with respect to such collateral to secure any such postpetition financing, the Prepetition Term Loan Agent will also obtain a lien with respect to such collateral and the liens granted to secure any such will be junior and subordinate to the liens granted to the Prepetition Term Loan Agent on such collateral,
  - (b) the sum of the proposed postpetition financing cannot exceed the ABL Cap (as defined in the Prepetition Intercreditor Agreement),
  - (c) the proposed use of Cash Collateral or proposed postpetition financing does not compel any grantor to seek confirmation of a specific plan of reorganization,
  - (d) the proposed use of Cash Collateral or postpetition financing does not compel the sale of all or substantially all of the Prepetition Collateral other than pursuant to the exercise of remedies after default and acceleration of such postpetition financing pursuant to such order or documentation, and
  - (e) that such postpetition financing is otherwise subject to, and in compliance with the terms of the Prepetition Intercreditor Agreement.

See §§ 1.1, 6.2(a).

- Similarly, subject to the satisfaction of the “Term Loan DIP Financing Conditions” (as defined in the Prepetition Intercreditor Agreement), the Prepetition ABL Agent agrees that it will not object to Term Loan Agent’s consent to the use of Cash Collateral constituting Term Loan Priority Collateral or consent to any person, including the Term Loan Lenders, to provide postpetition financing to the Debtors that is secured by liens on the Term Loan Priority Collateral. The Term Loan DIP Financing Conditions require among other things:
  - (a) that (i) the Prepetition ABL Agent retains its liens with respect to the Prepetition Collateral that existed as of the date of the commencement of a grantor’s insolvency proceeding, (ii) the Prepetition ABL Agent’s lien as to the ABL Priority Collateral remain senior and prior to the liens of the Prepetition Term Loan Agent with respect to such collateral, and (iii) as to ABL Priority Collateral acquired by the applicable grantor after the commencement of such grantor’s insolvency proceeding, if a lien is granted with respect to such collateral to secure any such postpetition financing, the Prepetition Term Loan Agent will also obtain a lien with respect to such collateral and the liens granted to secure any such proposed postpetition financing will be junior and subordinate to the liens granted to the Prepetition Term Loan Agent on such collateral,
  - (b) the proposed use of Cash Collateral or postpetition financing does not compel any grantor to seek confirmation of a specific plan of reorganization,
  - (c) the proposed use of Cash Collateral or postpetition financing does not compel the sale of all or substantially all of the Prepetition Collateral other than pursuant to the exercise of remedies after default and acceleration of such postpetition financing pursuant to such order or documentation, and
  - (d) that such postpetition financing is otherwise subject to, and in compliance with the terms of the Prepetition Intercreditor Agreement.

See §§ 1.1, 6.2(a).

**E. DIP Liens and DIP Superpriority Claims**

43. Pursuant to the proposed DIP Orders, as security for the loans and obligations under the DIP Facilities (the “DIP Obligations”), the DIP Agents, for the benefit of the DIP Agents and the DIP Lenders, shall be granted, pursuant to sections 364(c)(2), 364(c)(3)



and 364(d)(1) of the Bankruptcy Code, (a) valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all pre and postpetition property of the Debtors, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, “Unencumbered Property”), (b) valid, binding, continuing, enforceable, fully perfected first priority senior priming security interests in and liens upon all pre- and postpetition property of the Debtors and (c) valid, binding, continuing, enforceable, fully perfected security interests in and liens upon all pre- and postpetition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 43, as to which the liens and security interests in favor of the DIP Agents will be as described in such clauses) pursuant to Bankruptcy Code section 364(c)(3), whether now existing or hereafter acquired, that is subject to valid, perfected and unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), which security interests and liens in favor of the DIP Agents are junior to such valid, perfected and unavoidable liens (all property identified in clauses (a), (b) and (c) above being collectively referred to as the “DIP Collateral,” and the foregoing liens on the DIP Collateral being collectively referred to as the “DIP Liens”). The DIP Collateral for each of the DIP Facilities shall further include, without limitation, subject to entry of the Final Order, claims or causes of action under chapter 5 of the Bankruptcy Code and similar laws, and any proceeds thereof and property received thereby whether by judgment, settlement or otherwise (collectively, the “Avoidance Actions”).

44. To give effect to the parties' intent to recognize the priorities established in the Prepetition Intercreditor Agreement and as agreed to in the DIP Intercreditor Agreement,<sup>19</sup> the priorities of the DIP Liens shall be as follows: (a) the DIP Liens granted hereunder to the Bayside DIP Lenders (the "Bayside DIP Liens") shall be immediately junior in priority and subject to the DIP Liens granted to the ABL DIP Lenders in respect of the ABL Priority Collateral (as defined in the DIP Intercreditor Agreement, the "Postpetition ABL Priority Collateral") and (b) the DIP Liens granted hereunder to the ABL DIP Lenders (the "Wells Fargo DIP Liens") shall be immediately junior in priority and subject to the Bayside DIP Liens in respect of the Term Loan Priority Collateral (as defined in the DIP Intercreditor Agreement, the "Postpetition Bayside Priority Collateral"); *provided that*, subject to and effective upon entry of the Final Order and subject to entry of a final order in favor of a plaintiff sustaining a Lender Claim brought pursuant to paragraph 21 of the Interim Order, (i) if any Prepetition ABL Lender is required to turn over, disgorge or otherwise pay to the Debtors' estates any amount paid in respect of the ABL Roll Up Obligations, then the Prepetition ABL Lenders shall be entitled to a reinstatement of ABL Roll Up Obligations with respect to all such amounts and (ii) if any Prepetition Term Loan Lender is required to turn over, disgorge or otherwise pay to the Debtors' estates any amount paid in respect of the Prepetition Term Loan Debt (as defined in the DIP Intercreditor Agreement), then the Term Loan Lenders shall be entitled to a reinstatement of Prepetition Term Loan Debt with respect to all such amounts. The ABL Priority Collateral shall include the proceeds of the Avoidance Actions described in subclause (i) above, and subject to entry of the Final Order, and the Wells Fargo DIP Liens in respect of such Avoidance Actions shall be senior to the Bayside DIP Liens; the Term Loan Priority Collateral shall include the

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<sup>19</sup> The DIP Intercreditor Agreement entered between the DIP Lenders is attached here to as Exhibit E.

proceeds of the Avoidance Actions described in subclause (ii) above, subject to entry of the Final Order, and the Bayside DIP Liens in respect of such Avoidance Actions shall be senior to the Wells Fargo DIP Liens granted hereunder; and the DIP Liens in respect of the proceeds of all Avoidance Actions not covered by subclauses (i) or (ii) above shall rank *pari passu* as between the DIP Agents, subject to the terms of the DIP Intercreditor Agreement.

45. Except with respect to liens on Avoidance Actions, the DIP Liens shall be valid, perfected, enforceable, and effective as of the date of entry of the Interim Order without any further action by the DIP Obligors, the DIP Agents, or the DIP Lenders and without the need for the execution by the DIP Obligors of mortgages, security agreements, pledge agreements, financing statements, or other documents.

46. In addition to the DIP Liens, pursuant to sections 364(c)(1), 503, and 507 of the Bankruptcy Code, all of the DIP Obligations shall constitute allowed superpriority administrative expense claims (the “DIP Superpriority Claims”) with priority over any and all administrative expenses of the Debtors, whether heretofore or hereafter incurred, of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 364, 365, 503(b), 506(c), 507(a), 507(b), 726, 1113, 1114 or any other provisions of the Bankruptcy Code, which DIP Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors, including, but not limited to, the proceeds of Avoidance Actions, and all proceeds thereof. The Superpriority Claims granted under the Interim Order to the Bayside DIP Lenders shall be *pari passu* with the Superpriority Claims granted under the Interim Order to the ABL DIP Lenders.

**F. Milestone Schedule**

47. The Bayside DIP Credit Agreement contains the following milestones for the sale process (the "Bayside Sale Milestones"): <sup>20</sup>

- a. As of the Petition Date, the Debtors and Purchaser shall have entered into the Asset Purchase Agreement, which shall be in form and substance acceptable to Agent.
- b. As of the Petition Date, Sellers shall have filed the Sale Motion seeking the Bankruptcy Court's approval of the Bidding Procedures Order and the Sale Order, in form and substance acceptable to the Bayside DIP Agent.
- c. By February 8, 2013, the Bankruptcy Court shall have (i) held a hearing to consider approval of the proposed Bidding Procedures Order and (ii) entered the Bidding Procedures Order.
- d. The deadline to submit Qualified Bids shall be March 19, 2013 (the "Bid Deadline").
- e. The deadline for Sellers to commence the Auction if any other Qualified Bid is submitted prior to the Bid Deadline shall be March 25, 2013 (the "Auction Deadline").
- f. The Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to the Bayside DIP Agent no later than March 27, 2013 or a date that is 58 days after the Petition Date.
- g. The Closing Date shall have occurred on April 11, 2013. Bayside DIP Credit Agreement § 5.18

48. The ABL DIP Credit Agreement contains the following milestones for the sale process (the "ABL Sale Milestones"): <sup>20</sup>

- a. On or before March 29, 2013 (or such later date as the ABL DIP Lenders shall agree), Sellers shall have commenced the Auction (as defined in the Asset Purchase Agreement) if any other Qualified Bid (as defined in the Asset Purchase Agreement) is submitted prior to the Bid Deadline (the "Auction Deadline").
- b. On or before March 31, 2013 (or such later date as ABL DIP Lenders shall agree), the Bankruptcy Court shall have entered the

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<sup>20</sup> Failure to achieve any of these milestones constitutes an Event of Default under the DIP Facilities.

Sale Order, which shall be in form and substance acceptable to ABL DIP Agent, ABL Co-Collateral Agents and ABL DIP Lenders.

- c. On or before April 15, 2013 (or such later date as the ABL DIP Lenders shall agree), the Closing Date shall have occurred. ABL DIP Credit Agreement Schedule 5.16

**G. Use of Cash Collateral and Adequate Protection**

49. Most, if not all, of the cash, cash equivalents, and other amounts on deposit or maintained in the Debtors' bank accounts constitute proceeds that, to the extent subject to valid and perfected liens, are the Cash Collateral of the Prepetition Secured Parties in accordance with section 552(b) of the Bankruptcy Code.

50. The Prepetition Secured Parties have consented to the Debtors' use of Cash Collateral in the ordinary course of business and in accordance with the Budget, subject to the grant of adequate protection proposed in this Motion and the other terms and conditions set forth in the Interim Order.

51. To the extent their interests in the Prepetition Collateral constitute valid, perfected, and enforceable security interests and liens as of the Petition Date, the Prepetition Secured Parties are entitled, pursuant to sections 361 and 363(e) of the Bankruptcy Code, to adequate protection of their interests in the Prepetition Collateral to the extent of any diminution in the value of their interests in the Prepetition Collateral from and after the Petition Date. As adequate protection for any such diminution in value:<sup>21</sup>

- a. Subject to the terms of the Prepetition Intercreditor Agreement and the DIP Intercreditor Agreement (the "Intercreditor Agreements"), the Prepetition Agents (for themselves and for the respective benefit of the applicable Prepetition Secured Lenders) are granted a replacement security interest in and lien upon all DIP Collateral, subject and subordinate only to (i) the DIP Liens and any liens on

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<sup>21</sup> See Interim DIP Order ¶ 16.

the DIP Collateral that are senior to, or *pari passu* with, the DIP Liens and (ii) the Carve-Out (the “Adequate Protection Liens”). The Adequate Protection Liens granted by the Interim Order to the Prepetition Secured Parties shall rank as follows: (i) the Adequate Protection Liens granted hereunder to the Prepetition ABL Agent shall be immediately junior in priority and subject to the Adequate Protection Liens granted hereunder to the Prepetition Term Loan Agent in respect of the Term Loan Priority Collateral and (ii) the Adequate Protection Liens granted hereunder to the Prepetition Term Loan Agent shall be immediately junior in priority and subject to the Adequate Protection Liens granted to the Prepetition ABL Agent in respect of the ABL Priority Collateral.

- b. Subject to the terms of the Intercreditor Agreements, the Prepetition Agents (for themselves and for the respective benefit of the applicable Prepetition Secured Lenders) are granted, subject to the payment of the Carve-Out, allowed superpriority claims as provided for in Bankruptcy Code section 507(b), immediately junior to the claims under Bankruptcy Code section 364(c)(1) held by the DIP Agents and the DIP Lenders; *provided however* that none of the Prepetition Secured Parties shall receive or retain any payments, property or other amounts in respect of the superpriority claims under Bankruptcy Code section 507(b) granted hereunder or under the Prepetition Loan Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full or as otherwise agreed by the DIP Lenders or as provided in the DIP Documents. The superpriority claims granted hereunder to the Prepetition Secured Parties shall rank *pari passu* as between the Prepetition Agents.
- c. Subject to the limitations regarding the use of proceeds and DIP Collateral as set forth in the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement and otherwise subject to the terms of the Prepetition Intercreditor Agreements, the Prepetition Agents, for the benefit of the Prepetition Secured Lenders, shall receive (i) the immediate cash payment of all accrued and unpaid prepetition interest at the rates provided for in the applicable Prepetition Loan Documents and all other accrued and unpaid fees and disbursements owing to the Prepetition Secured Lenders or Prepetition Agents, as applicable, under the applicable Prepetition Loan Documents incurred prior to the Petition Date and (ii) the current cash payment of all interest accruing after the Petition Date at the rates provided for in the applicable Prepetition Loan Documents.

- d. The Prepetition Agents and the Prepetition Secured Lenders shall receive from the Debtors current cash payments of all fees and expenses payable to the Prepetition Agents or the Prepetition Secured Lenders, as applicable, under the Prepetition Loan Documents, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the Prepetition Agents or Prepetition Secured Lenders promptly upon receipt of 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 before and after the Petition Date.
- e. The Prepetition Agents shall be permitted to retain expert consultants and financial advisors at the expense of the Debtors, which consultants and advisors shall be given reasonable access for purposes of monitoring the Debtors' businesses and the value of the DIP Collateral.
- f. The Debtors shall provide the Prepetition Agents with financial and other reporting as described in the DIP Documents.
- g. Any Prepetition Secured Party may request further or different adequate protection, and the Debtors or any other party may contest any such request; *provided* that any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Agents and the DIP Lenders granted under this Interim Order and the DIP Documents.

52. The Prepetition Secured Lenders' Adequate Protection Liens shall be valid, perfected, enforceable, and effective as of the date of entry of the Interim Order, without any further action by the DIP Obligors, the DIP Agents, the Prepetition Agents, or the Prepetition Secured Lenders and without the need for the execution by the DIP Obligors of mortgages, security agreements, pledge agreements, financing statements, or other documents.

### **BASIS FOR RELIEF REQUESTED**

#### **A. The DIP Facilities Should Be Approved**

53. The Debtors' available and projected Cash Collateral alone is insufficient to fund the Chapter 11 Cases. Thus, the credit provided under the DIP Facilities is essential to

the continuity of the Debtors' operations and timely pursuit of the contemplated sale transaction, which serves the interests of all of the Debtors' economic stakeholders. Furthermore, the availability of Cash Collateral and credit under the DIP Facilities will instill much needed confidence in parties that are critical to the success of the Chapter 11 Cases – the Debtors' employees, vendors, and customers, as well as potential bidders for the Debtors' assets. This assurance greatly enhances the likelihood that the Debtors will continue to receive the support of key constituents during the pendency of the Chapter 11 Cases, and increases the opportunity for a robust, competitive sale process that will yield the greatest recovery for the Debtors' estates and creditors.

54. As described above, the Debtors have been and are unable to obtain sufficient financing without granting priming liens pursuant to section 364(d) of the Bankruptcy Code. Despite their concerted efforts, the Debtors did not find a lender or lender group willing to extend (i) unsecured credit pursuant to 364(a) or (b) of the Bankruptcy Code, allowable under section 503(b)(1) as an administrative expense or (ii) credit in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code. Similarly, the Debtors' efforts to procure postpetition financing or other financial accommodations from any other prospective lender on terms and conditions more favorable than the proposed DIP Facilities proved unsuccessful.

55. Having determined that the best viable postpetition financing option available was only under sections 364(c) and (d) of the Bankruptcy Code, the Debtors negotiated extensively with the DIP Agents, in good faith and at arm's length, regarding the DIP Facilities, the use of Cash Collateral, and adequate protection. Based on the circumstances, the Debtors determined in their sound business judgment that the proposed DIP Facilities were the only



viable alternative to avoid a value-destructive, disorderly liquidation of their assets. Given these circumstances, the proper exercise of the Debtors' fiduciary obligations mandated entry into the proposed DIP Facilities to prevent immediate and irreparable harm to the Debtors' estates and maximize recoveries to the Debtors' creditors.

56. The statutory requirement for obtaining postpetition credit under section 364(c) is a finding, made after notice and a hearing, that the debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code]." 11 U.S.C. § 364(c). Indeed, section 364(c) financing is appropriate when the debtor in possession is unable to obtain unsecured credit allowable as an ordinary administrative claim. See In re Ames Dep't Stores, Inc., 115 B.R. 34, 37-39 (Bankr. S.D.N.Y. 1990) (debtor must show that it has made a reasonable effort to seek other sources of financing under sections 364(a) and (b) of the Bankruptcy Code); In re Crouse Group, Inc., 71 B.R. 544, 549 (Bankr. E.D. Pa. 1987) (secured credit under section 364(c)(2) of the Bankruptcy Code is authorized, after notice and hearing, upon showing that unsecured credit cannot be obtained).

57. Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364(c) of the Bankruptcy Code. Specifically, courts look to whether:

- (a) the debtor is unable to obtain unsecured credit under section 364(b), *i.e.*, by allowing a lender only an administrative claim;
- (b) the credit transaction is necessary to preserve the assets of the estate; and
- (c) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and the proposed lender.

In re Ames Dep't Stores, 115 B.R. at 37-39.

58. Prepetition, the Debtors endeavored to identify potential sources of postpetition financing. The diligent efforts of the Debtors and PWP notwithstanding, the Debtors were and are unable to obtain the requisite postpetition financing absent the granting of superpriority claims and priming liens. All of the Debtors' assets are substantially fully encumbered, and the Prepetition Agents represented that the Prepetition Secured Lenders would not consent to any third party postpetition financing that primed their liens on the Prepetition Collateral. In light of these limitations, the Debtors have successfully negotiated postpetition financing on the best and only viable terms available. Absent the requisite financing, the Debtors' operations would come to an immediate halt, resulting in irreparable harm to their businesses, their going concern value, and ultimately, their ability to pursue a sale of substantially all of their assets – a course of action that the Debtors believe to be the most expeditious and effective means of maximizing the value of the Debtors' estates.

59. Accordingly, the circumstances of the Chapter 11 Cases necessitate postpetition financing under section 364(c) of the Bankruptcy Code, and the DIP Facilities reflect the sound exercise of the Debtors' business judgment.

**B. Approval of Priming Liens and Adequate Protection under Section 364(d)**

60. The Debtors have been and are unable to obtain sufficient financing without granting priming liens pursuant to section 364(d) of the Bankruptcy Code. Despite their concerted efforts, the Debtors did not find a lender or lender group, within the timeframe necessitated by the Debtors' liquidity needs, willing to extend (i) unsecured credit pursuant to 364(a) or (b) of the Bankruptcy Code, allowable under section 503(b)(1) as an administrative expense or (ii) credit in exchange for the grant of a superpriority administrative expense claim pursuant to section 364(c)(1) of the Bankruptcy Code. Similarly, the Debtors' efforts to procure

postpetition financing or other financial accommodations from any other prospective lender on terms and conditions more favorable than the proposed DIP Facilities proved unsuccessful. Accordingly, the Debtors propose to obtain the financing set forth in the DIP Credit Agreements by providing, among other things, superpriority claims, security interests, and liens pursuant to sections 364(c)(1), (2), (3), and (d) of the Bankruptcy Code.

61. If a debtor is unable to obtain credit under the provisions of section 364(c) of the Bankruptcy Code, the debtor may obtain credit secured by a senior or equal lien on property of the estate that is already subject to a lien, commonly referred to as a “priming lien.” 11 U.S.C. § 364(d). Section 364(d)(1) of the Bankruptcy Code, which governs the incurrence of postpetition debt secured by senior or “priming” liens, provides that the court may, after notice and a hearing, authorize the obtaining of credit or the incurring of debt secured by a senior or equal lien on property of the estate that is subject to a lien only if—

- (a) the trustee is unable to obtain credit otherwise; and
- (b) there is adequate protection of the interest of the holder of the lien on the property of the estate on which such senior or equal lien is proposed to be granted.

11 U.S.C. § 364(d).

62. Section 363(e) of the Bankruptcy Code provides that, “on request of an entity that has an interest in property used . . . or proposed to be used by the trustee, the court . . . shall prohibit or condition such use . . . as is necessary to provide adequate protection of such interest.” 11 U.S.C. § 363(e). Section 361 of the Bankruptcy Code sets forth a non-exhaustive list of forms of adequate protection, including periodic cash payments, additional liens and replacement liens. 11 U.S.C. § 361. The determination of adequate protection is a fact-specific inquiry to be decided on a case-by-case basis. See In re Mosello, 195 B.R. 277, 288 (Bankr.

S.D.N.Y. 1996). “Its application is left to the vagaries of each case . . . but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process.” *Id.* (quoting *In re Beker Indus. Corp.*, 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986)). The focus of the inquiry is whether a secured creditor is protected from diminution in the value of its interest in the collateral during the period of use. *See In re Swedeland Dev. Group, Inc.*, 16 F.3d 552, 564 (3d Cir. 1994) (“The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.”) (internal citations omitted).

63. In consideration for the adequate protection proposed in this Motion, the Prepetition Secured Lenders have consented to the priming of their liens provided the relief requested herein is granted. The Prepetition ABL Lenders’ Adequate Protection Liens, the Prepetition ABL Lenders’ DIP Superpriority Claims, the Term Loan Lenders’ Adequate Protection Liens, the Term Loan Lenders’ DIP Superpriority Claims, payment of the ABL Expenses, payment of the Term Loan Expenses, and the other protections afforded the Prepetition Secured Lenders provide protection against any diminution in the value of their respective interests in the Prepetition Collateral. Accordingly, the proposed adequate protection is fair, reasonable, and sufficient to satisfy the requirements of sections 363(c)(2) and (e) of the Bankruptcy Code.

64. Having determined that the best viable postpetition financing option available was only under sections 364(c) and (d) of the Bankruptcy Code, the Debtors negotiated extensively with the DIP Agents, in good faith and at arm’s length, regarding the DIP Facilities, the use of Cash Collateral, and adequate protection. The Debtors determined that the proposed DIP Facilities were the only viable alternative available to avoid a value-destructive, disorderly

liquidation of their assets. Given these circumstances, the proper exercise of the Debtors' fiduciary obligations mandated entry into the proposed DIP Facilities to prevent immediate and irreparable harm to the Debtors' estates and to maximize recoveries to the Debtors' creditors.

65. Accordingly, based on the circumstances described above, the Debtors request approval to grant superpriority claims, security interests, and "priming" liens pursuant to section 364(d) of the Bankruptcy Code.

**C. The Use of Cash Collateral**

66. In addition to the DIP Facilities, the Debtors require the use of Cash Collateral to ensure that they have the liquidity necessary to fund their ordinary course business operations and the administration of the Chapter 11 Cases, including implementation of the sale process in the time frame required by the Bayside DIP Facility.

67. Section 363 of the Bankruptcy Code governs the Debtors' use of property of the estates.<sup>22</sup> Section 363(c)(1) of the Bankruptcy Code provides that:

If the business of the debtor is authorized to be operated under Section . . . 1108 . . . of this title and unless the court orders otherwise, the trustee may enter into transactions, including the sale or lease of property of the estate, in the ordinary course of business, without notice or a hearing, and may use property of the estate in the ordinary course of business without notice or a hearing.

11 U.S.C. § 363(c)(1).

68. Section 363(c)(2) of the Bankruptcy Code, however, provides an exception with respect to "cash collateral" to the general grant of authority to use property of the

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<sup>22</sup> Pursuant to section 1107 of the Bankruptcy Code, a debtor in possession has all of the rights and powers of a trustee with respect to property of the estate, including the right to use property of the estate in compliance with section 363 of the Bankruptcy Code. See 11 U.S.C. § 1107(a).

estate in the ordinary course. Specifically, a trustee or debtor-in-possession may not use, sell, or lease “cash collateral” under subsection (c)(1) unless:

- (A) each entity that has an interest in such collateral consents; or
- (B) the court, after notice and a hearing, authorizes such use, sale, or lease in accordance with the provisions of this section.

11 U.S.C. § 363(c)(2).

69. As discussed above, without authority to use Cash Collateral, the Debtors’ liquidity needs will not be satisfied, jeopardizing the Debtors’ ability to conduct an efficient and effective sale process, and, ultimately, their ability to maximize value for the benefit of all parties in interest. Thus, the use of Cash Collateral is imperative to the success of the Chapter 11 Cases.

70. Accordingly, the Debtors submit that, under the circumstances here, their request to use Cash Collateral should be approved. Absent such authority, the Debtors would not have access to any funds to administer these Chapter 11 Cases.

**D. No Adequate Alternative to the DIP Facilities is Currently Available**

71. The diligent efforts of the Debtors and PWP notwithstanding, the Debtors were and are unable to obtain the requisite postpetition financing within the Debtors’ expedited timeframe absent the granting of superpriority claims and priming liens. All of the Debtors’ assets are substantially fully encumbered, and the Prepetition Agents represented that the Prepetition Secured Lenders would not consent to any third party postpetition financing that primed their liens on the Prepetition Collateral. In light of these limitations, the Debtors have successfully negotiated postpetition financing on the best and only viable terms available. The circumstances of the Chapter 11 Cases necessitate postpetition financing under section 364(c) and (d) of the Bankruptcy Code.

72. A debtor need only demonstrate “by a good faith effort that credit was not available without” the protections afforded to potential lenders by sections 364(c) and (d) of the Bankruptcy Code. See In re Snowshoe Co., 789 F.2d 1085, 1088 (4th Cir. 1986); see also In re Plabell Rubber Prods., Inc., 137 B.R. 897, 900 (Bankr. N.D. Ohio 1992).

73. So long as a debtor’s business judgment does not run afoul of the letter and spirit of the Bankruptcy Code, courts grant a debtor considerable discretion with respect to postpetition financing. See, e.g., In re CB Holding Corp., 447 B.R. 222, 227 (Bankr. D. Del. 2010 (“[T]he terms of the Post-Petition Financing appear to be fair and reasonable, are ordinary and appropriate for secured financing to debtors in possession, reflect the Debtors’ exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration”); Trans World Airlines, Inc. v. Travellers Int’l AG (In re Trans World Airlines, Inc.), 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving postpetition loan and receivables facility because such facility “reflect[ed] sound and prudent business judgment . . .”); In re Ames Dep’t Stores, Inc., 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) (“[C]ases consistently reflect that the court’s discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit parties in interest”); see also Bray v. Shenandoah Fed. Sav. & Loan Ass’n (In re Snowshoe Co., Inc.), 789 F.2d 1085, 1088 (4th Cir. 1986); In re Simasko Prod. Co., 47 B.R. 444, 449 (D. Colo. 1985); In Farmland Indus., Inc., 294 B.R. 855, 881-84 (Bankr. W.D. Mo. 2003); In re Curlew Valley Assocs., 14 B.R. 506, 513-14 (Bankr. D. Utah 1981).

74. A debtor is not required to seek alternative financing from every possible lender in order to satisfy the requirements of section 364(d) of the Bankruptcy Code. In re 495 Central Park Ave. Corp., 136 B.R. 626, 630 (Bankr. S.D.N.Y. 1992). Rather, a debtor need only demonstrate sufficient efforts to obtain financing from other sources without the granting of senior liens. Id. at 631 (debtor testified to numerous failed attempts to procure financing from various sources, explaining that “most lend money only in return for a senior secured position”); Snowshoe, 789 F.2d at 1088 (debtor demonstrated that credit could not be obtained without the granting of a senior lien by providing evidence that efforts to obtain financing from other financial institutions in the geographic area had proven unsuccessful).

75. As discussed above, the Debtors have successfully negotiated postpetition financing on the best and only viable terms available. The circumstances of the Chapter 11 Cases necessitate postpetition financing under section 364(c) and (d) of the Bankruptcy Code, and the DIP Facilities reflects the sound exercise of the Debtors’ business judgment.

**E. The Terms of DIP Credit Agreements are Fair, Reasonable, and Appropriate**

76. The purpose of the proposed DIP Facilities is to provide the Debtors with sufficient liquidity to bridge the Debtors through a successful sale of substantially all of their assets as a going concern. Without the financing provided pursuant to the DIP Facilities, the Debtors would not be able to realize the full value of their assets, to the detriment of all stakeholders.

77. As set forth in the Tang Declaration, given the exigent circumstances of the Chapter 11 Cases, the terms and conditions of the DIP Facilities are fair and reasonable, and were negotiated extensively by well-represented, independent parties in good faith and at arm’s length. The interest rates of the DIP Facilities are the same or better than the current interest



rates in effect under the Prepetition Loan Agreements. Specifically, the interest rate under the Bayside DIP Facility is the same as the prepetition default interest rate pursuant to the Prepetition Term Loan Credit Agreement, and the interest rate under the ABL DIP Facility is 3.75% as opposed to the prepetition default rate of 4.75% under the Prepetition ABL Credit Agreement. In addition, with respect to the ABL DIP Facility, the “new money” availability under the borrowing base to the Debtors is expected to be in excess of approximately \$15,000,000 through the anticipated closing date of the contemplated sale of the Debtors’ assets.<sup>23</sup> Accordingly, the DIP Agents and the DIP Lenders and all obligations incurred under the DIP Facilities should be accorded the benefits of section 364(e) of the Bankruptcy Code.<sup>24</sup>

78. Upon entry of the Interim Order, the total commitment of \$175,000,000 under the ABL DIP Facility and \$25,000,000 under the Bayside DIP Facility shall be made available on the Closing Date; however, during such interim period, the DIP Borrowers shall be permitted to use only such amounts as are consistent with the Budget and the applicable DIP Credit Agreement. Pursuant to the ABL DIP Credit Agreement, upon entry of the Interim Order and the closing of the ABL DIP Facility, the ABL DIP Facility shall be used to pay in full – *i.e.*, “roll-up” into the ABL DIP Facility – the ABL DIP Roll Up Obligations. The Bayside DIP Credit Agreement also provides for a “roll-up” of the Term Loan Prepetition Debt; however, such repayment of the Term Loan Prepetition Debt is conditioned upon the entry of the Final Order. Under the circumstances, the DIP Lenders are the only viable source of postpetition financing for the Debtors and, importantly, the proposed terms of the DIP Facilities presently

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<sup>23</sup> See Tang Declaration ¶ 25.

<sup>24</sup> The provisions highlighted pursuant to Local Rule 4001-2 were negotiated thoroughly and were required both by the DIP Lenders for the availability of the DIP Facility and the Prepetition Secured Lenders for their consent to use Cash Collateral. Therefore, the inclusion of such provisions is justified by the facts and circumstances of the Chapter 11 Cases.

before the Bankruptcy Court, including the roll-up of the amounts due prepetition under the Prepetition Loans Agreements, are the only terms under which the DIP Lenders are willing to lend. Thus, absent approval of the roll-up of amounts owed under the Prepetition Loan Agreements as required by the DIP Lenders in connection with the proposed DIP Facilities, the Debtors would have no ability to finance the Chapter 11 Cases. Simply stated, the Debtors' only alternative to the proposed DIP Facilities is an immediate, piecemeal liquidation of their estates and the value destruction attendant thereto.

79. Furthermore, the amounts owed under the Prepetition Loan Agreements are fully-secured and the Debtors are not aware of any basis for challenging the Prepetition Liens (which, in any event shall be subject to any timely commenced challenge as provided in the Interim Order). Accordingly, no party in interest will be prejudiced by the roll-up. See, e.g., In re Vertis Holdings, Inc., Case No. 12-12821 (CSS) (Bankr. D. Del. Oct. 12, 2012) (in connection with interim order, court granted roll up of prepetition oversecured ABL loans in connection with debtor-in-possession financing where debtor-in-possession financing would be paid off in connection with sale of substantially all of debtor's assets pursuant to section 363 of the Bankruptcy Code and where no creditors were being unconsensually primed).<sup>25</sup>

80. Additionally, both the ABL Roll Up Obligations and the Bayside Roll Up DIP Loans comprise an essential component of the adequate protection package for the Prepetition Agents and the Prepetition Secured Lenders, given that pursuant to the Forbearance Agreements such parties have assumed increasingly greater credit risk through reductions to the minimum availability covenants under the Prepetition Loan Agreements. On this basis, the Debtors have demonstrated extraordinary circumstances warranting the roll-up of the ABL

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<sup>25</sup> The Vertis Interim DIP Order and relevant transcript of the First Day Hearing is attached hereto as Exhibit F.

Prepetition Debt upon entry of the Interim Order and the Prepetition Term Loan Obligations upon entry of the Final Order.

81. To further illustrate that the terms are fair, reasonable and adequate, the proposed DIP Credit Agreements and the Interim Order provide that the security interests and administrative expense claims granted to the DIP Lenders are subject to the Carve-Out. In In re Ames Dep't Stores, 115 B.R. 34 (Bankr. S.D.N.Y. 1990), the court found that such "carve-outs" are not only reasonable, but are necessary to ensure that official committees and the debtor's estate will be assured of the assistance of counsel. Id. at 40.

82. Accordingly, the terms of the DIP Facilities are fair, reasonable and adequate, and the DIP Lenders under the DIP Credit Agreements should be accorded the benefits of section 364(e) of the Bankruptcy Code in respect of such agreement.

**F. The Automatic Stay Should Be Modified on a Limited Basis**

83. The relief requested in this Motion contemplates a modification of the automatic stay pursuant to section 362 of the Bankruptcy Code to (a) permit the DIP Obligors to grant the security interests, liens, and superpriority claims described above with respect to the DIP Lenders and the Prepetition Secured Lenders, as the case may be, and to perform such acts as may be reasonably requested to assure the perfection and priority of such security interests and liens, (b) permit the DIP Agents and the DIP Lenders to exercise (solely with respect to the DIP Facilities), upon the occurrence and continuance of an Event of Default, the rights and remedies provided in the DIP Credit Agreements, the Interim Order, and the Final Order, as applicable, and (c) implement the terms of the proposed DIP Orders. In the Debtors' business judgment, the stay modification requested in this Motion is fair and reasonable under the circumstances.

**G. Interim Approval Should Be Granted**

84. Bankruptcy Rules 4001(b) and (c) provide that a final hearing on a motion to use cash collateral or obtain credit, respectively, may not be commenced earlier than fourteen (14) days after service of such motion. Upon request, however, the Bankruptcy Court is empowered to conduct a preliminary expedited hearing on the motion and authorize the use of cash collateral and the obtaining of credit to the extent necessary to avoid immediate and irreparable harm to a debtor's estate pending a hearing to consider the relief requested on a final basis.

85. Pursuant to Bankruptcy Rule 4001(b) and (c), the Debtors respectfully request that the Bankruptcy Court conduct an expedited preliminary hearing on this Motion and (i) authorize the Debtors to use Cash Collateral and, consistent with the Budget and the DIP Credit Agreements, use the proceeds of the DIP Facilities on an interim basis, pending the Final Hearing and entry of the Final Order, to avoid immediate and irreparable harm to the Debtors' estates and (ii) schedule the Final Hearing.

86. As of the Petition Date, the Debtors held no unrestricted cash. The proposed DIP Facilities and the proposed use of Cash Collateral are the only available funds to finance their ordinary course business operations and the administration of the Chapter 11 Cases.<sup>26</sup> Thus, the Debtors have an urgent and immediate need for liquidity. Absent authorization to use Cash Collateral and obtain credit under the DIP Facilities, on an interim basis pending the Final Hearing, the Debtors will suffer immediate and irreparable harm, as the Debtors would be unable to fund business operations. Further, any delay in commencing the sale process poses grave risk to the Debtors and their ability to implement a strategy that will yield

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<sup>26</sup> See First Day Declaration 48.

the highest recovery for their estates and creditors. In short, the interim relief requested in the Motion is necessary to maintain critical stasis while the Debtors endeavor to achieve a value-maximizing sale of their assets – and accordingly, is vital to the ultimate success of the Chapter 11 Cases.

#### **THE DEBTORS SATISFY BANKRUPTCY RULE 6003**

87. Pursuant to Bankruptcy Rule 6003, the Bankruptcy Court may grant a motion to “pay all or part of a claim that arose before the filing of the petition” within twenty-one (21) days after the Petition Date to the extent the relief is necessary to avoid immediate and irreparable harm. Fed. R. Bankr. P. 6003. As set forth above and in the First Day Declaration, the relief requested in this Motion is necessary to avoid immediate and irreparable harm to the Debtors and their estates, and therefore, entry of an order granting such relief on an interim basis is appropriate under Bankruptcy Rule 6003.

#### **WAIVER OF BANKRUPTCY RULES 6004(A) AND (H)**

88. To implement the foregoing immediately, the Debtors request that the Bankruptcy Court waive the notice requirements under Bankruptcy Rule 6004(a), if applicable, and the fourteen (14) day stay of an order authorizing the use, sale, or lease of property under Bankruptcy Rule 6004(h).

#### **NOTICE**

89. Notice of this Motion will be provided to: (i) the U.S. Trustee; (ii) counsel to the agent under the Debtors’ Prepetition ABL Credit Agreement; (iii) counsel to the agent under the Debtors’ Prepetition Term Loan Credit Agreement; (iv) counsel to the agent under the Bayside DIP Facility; (v) counsel the agent under the ABL DIP Facility; (vi) the indenture trustee for the Debtors’ Convertible Notes; (vii) counsel for the ad hoc group of Convertible

Noteholders; (viii) the holders of the forty (40) largest unsecured claims against the Debtors, on a consolidated basis; (ix) the Debtors' cash management banks; and (x) the Internal Revenue Service. Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-1(m) of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware. In light of the nature of the relief requested herein, the Debtors submit that no other or further notice is necessary.

**NO PRIOR MOTION**

90. No prior motion for the relief requested in this Motion has been made by the Debtors to this or any other court.

*[Remainder of Page Intentionally Left Blank]*

WHEREFORE, the Debtors respectfully request entry of interim and final orders granting the relief requested in this Motion and such other and further relief as is just and proper.

Dated: January 28, 2013  
Wilmington, Delaware

YOUNG CONAWAY STARGATT & TAYLOR, LLP

/s/ Maris J. Kandestin  
Pauline K. Morgan (No. 3650)  
Maris J. Kandestin (No. 5294)  
Rodney Square  
1000 North King Street  
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- and -

PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP  
Alan W. Kornberg  
Jeffrey D. Saferstein  
Elizabeth R. McColm  
Margaret A. Phillips  
Ann K. Young  
1285 Avenue of the Americas  
New York, New York 10019  
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Facsimile: (212) 757-3990

*Proposed Counsel to the Debtors and  
Debtors-in-Possession*

**EXHIBIT F**

**Vertis Interim DIP Order and the First Day Hearing Transcript**



IN THE UNITED STATES BANKRUPTCY COURT  
DISTRICT OF DELAWARE

	X	
	:	
<i>In re</i>	:	Chapter 11
	:	
VERTIS HOLDINGS, INC., <i>et al.</i> ,	:	Case No. 08-11460 (CSS)
	:	
	:	(Jointly Administered)
Debtors.	:	
	:	
	:	
	X	

**INTERIM ORDER (I) AUTHORIZING THE DEBTORS TO (A)(i) OBTAIN  
POSTPETITION SENIOR SECURED SUPER-PRIORITY FINANCING PURSUANT  
TO 11 U.S.C. §§ 361, 362, 363(c), 363(e), 364(c), 364(d)(1) AND 364(e) AND  
(B) UTILIZE CASH COLLATERAL OF PREPETITION SECURED PARTIES,  
(II) AUTHORIZING THE REPAYMENT IN FULL OF AMOUNTS OWED UNDER  
THE PREPETITION SENIOR SECURED REVOLVING CREDIT FACILITY AND THE  
PREPETITION A/R SECURITIZATION FACILITY, (III) GRANTING ADEQUATE  
PROTECTION TO THE PREPETITION SENIOR SECURED  
LENDERS, A/R SECURITIZATION PROVIDER, AND SECOND LIEN  
NOTEHOLDERS, (V) SCHEDULING A FINAL HEARING PURSUANT TO  
BANKRUPTCY RULES 4001(b) AND (c), AND (VI) GRANTING RELATED RELIEF**

Upon the motion dated July 15, 2008 (the "Motion") of Vertis Holdings, Inc. ("Holdings") and its affiliated debtors, as debtors and debtors in possession (collectively, the "Debtors")<sup>1</sup> in the above-referenced chapter 11 cases (the "Vertis Debtors' Reorganization Cases"), for entry of an interim order (this "Interim Order") and a final order ("Final Order"), under sections 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, *et seq.* (as amended, the "Bankruptcy Code"), and Rules 2002, 4001 and 9014 of the Federal Rules of Bankruptcy Procedure (as amended, the "Bankruptcy Rules") and Rule 4001-2 of the Local Rules of Bankruptcy Practice and Procedure of the United States Bankruptcy Court for the District of Delaware (the "Local Rules"), seeking:

<sup>1</sup> The Debtors in these cases, along with the last four (4) digits of each Debtor's federal tax identification number, are Holdings (1556), Vertis, Inc. (8322), Webcraft, LLC (6725), Webcraft Chemicals, LLC (6726), Enteron Group, LLC (3909), Vertis Mailing, LLC (4084), and USA Direct, LLC (5311).

(i) authorization for Vertis, Inc. ("Vertis" or the "Borrower") to obtain senior secured postpetition financing in an aggregate principal amount not to exceed \$380,000,000 (the "DIP Credit Facility"), pursuant to section 364 of the Bankruptcy Code, and authorization for Holdings and each of Borrower's existing and subsequently acquired or formed direct and indirect subsidiaries which are Debtors and/or which are guarantors (together with Holdings, but excluding Vertis Digital Services, Ltd., the "Guarantors") under the Prepetition Credit Agreement (as defined below), to guarantee the Borrower's obligations under the DIP Credit Facility, from General Electric Capital Corporation ("GE Capital") as administrative agent and collateral agent (in such capacities, the "DIP Agent") for itself and certain other financial institutions (collectively with GE Capital, the "DIP Lenders"), pursuant to the terms of this Interim Order and that certain Senior Secured Priming and Superpriority Debtor-In-Possession Credit Agreement by and among the Borrower, the Guarantors, the DIP Agent and the DIP Lenders, in substantially the form attached hereto as Exhibit A (as the same may be amended, restated, supplemented or otherwise modified from time to time, the "DIP Credit Agreement"), and any related documents required to be delivered by or in connection with the DIP Credit Agreement (collectively, the "DIP Credit Documents");

(ii) authorization for the Debtors to execute and enter into the DIP Credit Documents and to perform such other and further acts as may be required in connection with the DIP Credit Documents;

(iii) authorization for the Debtors to grant security interests, liens, and superpriority claims (including a superpriority administrative claim pursuant to section 364(c)(1) of the Bankruptcy Code, 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) to the DIP Agent, for the benefit of itself and the DIP Lenders, to secure all obligations of the Debtors under and with respect to the DIP Credit Facility;

(iv) authorization for the Debtors' limited use of cash collateral, as such term is defined in section 363(a) of the Bankruptcy Code (as so defined, "Cash Collateral"), on the terms and conditions set forth in this Interim Order and in the DIP Credit Agreement;

(v) adequate protection of the liens and security interests (such liens and security interests, the "Prepetition Liens") of the lenders (such lenders in such capacities, the "Prepetition Lenders") under that certain Credit Agreement, dated as of December 22, 2004 (as amended, restated, supplemented or otherwise modified from time to time, the "Prepetition Credit Agreement"), among Borrower, certain other persons designated as "Credit Parties" thereunder, the Prepetition Lenders and GE Capital as Agent (in such capacity or in the capacity of Collateral Agent under the Prepetition Security Agreement (as defined hereinafter) on behalf of the Prepetition Lenders, the "Prepetition Agent") and as a Prepetition Lender, which Prepetition Liens are being primed by the DIP Credit Facility, as more fully set forth in this Interim Order;

(vi) adequate protection of the liens and security interests (such liens and security interests, the "Vertis Second Liens") of the holders (the "Vertis Second Lien Noteholders") of Vertis's 9 ¾% Senior Secured Second Lien Notes due April 1, 2009 (the "Vertis Second Lien Notes") issued pursuant to that certain Indenture, dated as of June 6, 2003 (as amended, restated, supplemented or otherwise modified from time to time, the "9 ¾% Indenture") among Vertis and the Indenture Trustee thereunder (the "9 ¾% Indenture Trustee");

(vii) authorization for the Borrower (a) to use a portion of the proceeds from the DIP Credit Facility to repurchase, upon entry of this Interim Order and as a condition

to closing the DIP Credit Facility, from Vertis Receivables II, LLC ("Vertis Receivables") all accounts receivable and related property previously conveyed to Vertis Receivables pursuant to that certain Receivables Sale and Servicing Agreement, dated as of November 25, 2005 (as amended, restated, supplemented or otherwise modified from time to time, the "A/R Sale and Servicing Agreement"), which repurchased property shall remain subject to the existing liens and security interests (such liens and security interests, the "A/R Obligations Prepetition Liens") in favor of the Securitization Provider under the A/R Securitization Facility (each as defined below) to secure the Surviving A/R Obligations (as defined below), (b) to cause Vertis Receivables to use the proceeds of such repurchase to pay, finally, fully and in cash, all of Vertis Receivables' obligations (including obligations with respect to principal, interest, fees, expenses and then outstanding indemnification obligations, but excluding the Surviving A/R Obligations (as defined below)) under Vertis Receivables' existing receivables securitization facility (the "A/R Securitization Facility") with GE Capital, as a lender, a swing line lender and as administrative agent (in such capacities, together with the other "Indemnified Persons" and "Affected Parties" under the A/R Securitization Facility, and each of their successors, assigns and pledgees, the "Securitization Provider"), (c) to assume all of Vertis Receivables' surviving obligations (including, without limitation, all contingent, unliquidated indemnification obligations under the A/R Securitization Facility remaining after the repurchase transaction described in this clause (vii)) (the "Surviving A/R Obligations"), (d) to use a portion of the proceeds of the DIP Credit Facility to pay Surviving A/R Obligations, and (e) to grant adequate protection of the A/R Obligations Prepetition Liens in the accounts receivable and related property to be repurchased by the Borrower upon the entry of this Interim Order (the "Securitization Collateral"), which

A/R Obligations Prepetition Liens are being primed by the DIP Credit Facility, as more fully set forth in this Interim Order;

(viii) authorization for the Borrower to use a portion of the proceeds from the DIP Credit Facility upon entry of this Interim Order (a) to pay in full in cash, as a condition to closing the DIP Credit Facility, the outstanding balance of Revolving Credit Advances (as defined in the Prepetition Credit Agreement and referred to in this Interim Order as the "Prepetition Revolving Credit Advances"), (b) to provide cash collateral for the letters of credit issued and outstanding on the Commencement Date under the Prepetition Credit Agreement (the "Prepetition Letters of Credit") in an amount equal to 102% of the face amount of such Prepetition Letters of Credit, (c) to pay and reimburse the Prepetition Agent (including, without limitation, in its capacity as "Collateral Agent" under the Prepetition Security Agreement, as defined hereinafter) for unpaid fees, costs and expenses incurred by the Prepetition Agent under the Prepetition Credit Agreement and/or the Prepetition Security Agreement, whether incurred prior or subsequent to the Commencement Date, at the time and in the manner due under the Prepetition Credit Agreement or the Prepetition Security Agreement, as applicable, and to pay the Prepetition Agent for such indemnification rights or claims that it has or may have under the Prepetition Credit Agreement and/or the Prepetition Security Agreement, whether incurred prior or subsequent to the Commencement Date, at the time and in the manner due under the Prepetition Credit Agreement or the Prepetition Security Agreement, as applicable (all such fees, costs, expenses and indemnification rights or claims of the Prepetition Agent, the "Prepetition Agreement Expenses") and (d) such other uses as are approved under this Interim Order;

(ix) modification of the automatic stay imposed under section 362 of the Bankruptcy Code to the extent necessary to permit the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Agent and the Prepetition Lenders to implement the terms of this Interim Order;

(x) an emergency interim hearing (the "Interim Hearing") on the Motion for the Court to consider entry of this Interim Order, which authorizes the Borrower to borrow or obtain letters of credit under the DIP Credit Documents, on an interim basis, up to an aggregate principal or face amount not to exceed \$380,000,000; and

(xi) the scheduling of a final hearing (the "Final Hearing") on the Motion no later than August 19, 2008 to consider entry of a Final Order authorizing the balance of the borrowings and letter of credit issuances under the DIP Credit Documents on a final basis and approval of notice procedures with respect thereto;

The Interim Hearing having been held by this Court on July 16, 2008; and the Court having considered the Motion and all pleadings related thereto, including the record made by the Debtors at the Interim Hearing; and after due deliberation and consideration, and good and sufficient cause appearing therefor:

**THE COURT HEREBY FINDS AND CONCLUDES AS FOLLOWS:**

A. On July 15, 2008 (the "Commencement Date"), each Debtor filed with this Court a voluntary petition for relief under chapter 11 of the Bankruptcy Code. The Debtors are continuing to operate their respective businesses and manage their respective properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code.

B. This Court has jurisdiction over this matter pursuant to 28 U.S.C. §§ 157(b) and 1334. This is a core proceeding pursuant to 28 U.S.C. § 157(b)(2). Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409.

C. The Debtors have provided notice of the Motion and the Interim Hearing by facsimile, electronic mail or overnight mail to: (i) the United States Trustee for the District of Delaware; (ii) the Debtors' thirty (30) largest unsecured creditors (on a consolidated basis); (iii) Winston & Strawn LLP, 35 W. Wacker Drive, Chicago, Illinois 60601, Attn: Brian I. Swett, Esq., and Winston & Strawn LLP, 200 Park Avenue, New York, New York 10166, Attn: William D. Brewer, Esq., as counsel to the DIP Agent and the Prepetition Agent; (iv) Emmet, Marvin & Martin, LLP, 120 Broadway, 32nd Floor, New York, New York 10271, Attn: Edward P. Zujkowski, Esq., as counsel to The Bank of New York, as the 9 ¾% Indenture Trustee and the indenture trustee under the 10 7/8% Indenture, and the 13 ½% Indenture; (v) Akin Gump Strauss Hauer & Feld LLP, 590 Madison Avenue, New York, New York 10022, Attn: Ira Dizengoff, Esq. and David Simonds, Esq., and Pepper Hamilton LLP, Hercules Plaza, Suite 5100, 1313 Market Street, Wilmington, DE 19899-1709, Attn: David M. Fournier, Esq., as co-counsel to the Vertis Informal Committee; (vi) Stroock & Stroock & Lavan LLP, 180 Maiden Lane, New York, New York 10038, Attn: Kristopher M. Hansen, Esq. and Jayme T. Goldstein, Esq., as counsel to the Vertis Second Lien Noteholder Group; (vii) Dewey & LeBoeuf LLP, 1301 Avenue of the Americas, New York, New York 10019, Attn: Martin J. Bienenstock, Esq., as counsel to those certain holders of notes under the 13 ½% Indenture that are signatories to the Restructuring Agreement; (viii) Ropes & Gray LLP, One International Place, Boston, MA 02110, Attn: Steven T. Hoort, Esq., as counsel to certain Vertis shareholders; (ix) Wollmuth Maher & Deutsch LLP, 500 Fifth Avenue, New York, New York 10110, Attn: Paul R. DeFilippo, Esq., and Manton, Sweeney, Gallo, Reich & Bolz LLP, 92-25 Queens Blvd., Rego Park, New York 11374, Attn: Frank Bolz, Esq., as counsel to CLI;<sup>2</sup> (x) Simpson Thatcher & Bartlett LLP, 425 Lexington Avenue, New York, New York 10017, Attn: Mark J. Thompson, Esq., as counsel to the Evercore

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<sup>2</sup> Capitalized terms used and not otherwise defined in this paragraph C shall have the meanings ascribed to them in

Parties; (xi) Kirkland & Ellis LLP, Citigroup Center, 153 East 53rd Street, New York, New York 10022-4611, Attn: Paul M. Basta, Esq., and Kirkland & Ellis LLP, Aon Center, 200 East Randolph Drive, Chicago, Illinois 60601, Attn: Ray C. Schrock, Esq. and Chad J. Husnick, Esq., as counsel to the ACG Debtors; (xii) Milbank, Tweed, Hadley & McCloy LLP, 1 Chase Manhattan Plaza, New York, New York 10005, Attn: Dennis F. Dunne, Esq., Abhilash M. Raval, Esq., and Debra Alligood White, Esq., as counsel to the ACG Informal Committee; (xiii) Bingham McCutchen LLP, 399 Park Avenue, New York, New York 10022, Attn: Steven Wilamowsky, Esq., as counsel to the Prepetition Term Lenders; (xiv) all holders of liens against the Debtors; and (xv) M&T Bank (as defined herein), 107 West Market Street, York, PA 17401, Attn: Steven E. Stewart, Vice President ((i) through (xv), collectively, the "Notice Parties"). Given the nature of the relief sought in the Motion, the Court concludes that no further notice is necessary.

D. No official committee of unsecured creditors ("Committee"), as provided for under section 1102 of the Bankruptcy Code, has been appointed in the Vertis Debtors' Reorganization Cases.

E. Subject to Paragraph 36 below, the Debtors hereby admit, stipulate and agree that:

(1) Pursuant to the Prepetition Credit Agreement, the Prepetition Lenders agreed to extend revolving and term credit facilities to, and issue letters of credit for, Borrower from time to time, including, *inter alia*, (i) Revolving Credit Advances by the revolving lenders (the "Prepetition Revolving Lenders") in an aggregate principal committed amount of up to \$200,000,000, and (ii) a "last out" term loan (the "Prepetition Term Loan") by the term lenders (the "Prepetition Term Lenders") in an aggregate principal amount of \$50,000,000. The

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the Vertis Prepackaged Plan.



Prepetition Credit Agreement, along with any other agreements, instruments, notes, guaranties and other documents executed in connection therewith are collectively referred to herein as the "Prepetition Credit Documents" and are available upon request from counsel to the Debtors or counsel to the Prepetition Agent. All obligations of the Debtors arising under the Prepetition Credit Agreement or any other Prepetition Credit Document, including all loans, advances, debts, liabilities, principal, interest, fees, charges, expenses and obligations for the performance of covenants, tasks or duties, or for the payment of monetary amounts owing to the Prepetition Agent or Prepetition Lenders by the Debtors, of any kind or nature, whether or not evidenced by any note, agreement or other instrument, and specifically including the Prepetition Agreement Expenses, shall hereinafter be referred to as the "Prepetition Obligations." All obligations of the Debtors arising under the Prepetition Credit Agreement or any other Prepetition Credit Document in respect of the Prepetition Term Loan by the Prepetition Term Lenders, including principal and interest on, and other amounts in respect of, such Prepetition Term Loan shall hereinafter be referred to as the "Prepetition Term Obligations." All Prepetition Obligations other than the Prepetition Term Obligations shall hereinafter be referred to as the "Prepetition Agent/Revolver Obligations."

(2) Pursuant to certain Collateral Documents (as defined in the Prepetition Credit Agreement and referred to in this Interim Order as the "Prepetition Collateral Documents"), including that certain Security Agreement, dated as of December 7, 1999 and amended and restated as of June 6, 2003, entered into by and among the Prepetition Agent, as successor Collateral Agent (as defined therein) for the benefit of the Prepetition Lenders and the 9 ¾% Indenture Trustee (among others), Vertis, Holdings, and each other party signatory thereto (as amended, restated, supplemented or otherwise modified from time to time, the "Prepetition Security Agreement"), each Debtor granted to the Prepetition Agent, for the benefit of itself and

the Prepetition Lenders, to secure such Debtor's obligations under the Prepetition Credit Documents, a first-priority security interest in and continuing lien on substantially all of such Debtor's assets, including, but not limited to, all of such Debtor's accounts, chattel paper, documents, general intangibles, goods (including, without limitation, inventory and equipment), instruments, intellectual property, investment property, letter of credit rights, money, receivables and receivable records, commercial tort claims, and a pledge of one hundred percent (100%) of the capital stock of each of its domestic subsidiaries and sixty five percent (65%) of the capital stock of each of its foreign subsidiaries, and all proceeds, products, accessions, rents and profits of or in respect of any of the foregoing, in each case whether then owned or existing or thereafter acquired or arising. All collateral granted or pledged by the Debtors pursuant to the Prepetition Credit Documents shall collectively be referred to herein as the "Prepetition Collateral."

(3) Pursuant to that certain 9 ¾% Indenture, Vertis issued the Vertis Second Lien Notes in an aggregate principal amount of \$350,000,000 to the Vertis Second Lien Notchholders. The 9 ¾% Indenture and the Vertis Second Lien Notes, along with any other documents and instruments executed and delivered in connection with the 9 ¾% Indenture or the Vertis Second Lien Notes, in each case as the same may be amended, modified and/or supplemented from time to time in accordance with the terms thereof, are collectively referred to herein as the "Vertis Second Lien Debt Documents" and are available upon request from counsel to the Debtors or counsel to the 9 ¾% Indenture Trustee.

(4) Pursuant to certain Security Documents (as defined in the 9 ¾% Indenture and referred to in this Interim Order as the "Vertis Second Lien Collateral Documents"), including the Security Agreement, each Debtor granted to the Collateral Agent, for the benefit of the 9 ¾% Indenture Trustee, to secure such Debtor's obligations under the Vertis Second Lien Debt Documents, a second-priority security interest in and lien on all of such Debtor's right, title

and interest in the Prepetition Collateral other than the Excluded 2003 Senior Secured Notes Collateral, as such term is defined in the Prepetition Security Agreement (the "Vertis Second Lien Notes Collateral").

(5) All Prepetition Credit Documents executed and delivered by the Debtors to the Prepetition Agent are valid and enforceable by the Prepetition Agent and the Prepetition Lenders against each of the Debtors. The Prepetition Agent duly perfected its liens upon and security interests in the Prepetition Collateral by, among other things, filing financing statements, mortgages and fixture filings and, where necessary, by possession of relevant instruments, certificates, or other property. All of such financing statements, mortgages and fixture filings were validly executed by authorized representatives of the Debtors. Pursuant to the Prepetition Credit Documents, the Prepetition Lenders have perfected first-priority security interests in and liens on all of the Prepetition Collateral, including the Cash Collateral.

(6) The liens and security interests of the Prepetition Lenders in the Prepetition Collateral, as security for the Prepetition Obligations, constitute valid, binding, enforceable and perfected first-priority liens and security interests and are not subject to avoidance, disallowance or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law (except insofar as such liens are subordinated to the DIP Liens, the Pari Passu Liens and the Carve-Out (each term as hereinafter defined) in accordance with the provisions of this Interim Order). The Debtors further admit, acknowledge and agree that (i) the Prepetition Obligations constitute legal, valid and binding obligations of each of the Debtors, (ii) no offsets, defenses or counterclaims to the Prepetition Obligations exist and (iii) no portion of the Prepetition Obligations is subject to avoidance, disallowance, reduction or subordination pursuant to the Bankruptcy Code or applicable non-bankruptcy law. The Debtors irrevocably

waive any right to challenge or contest such liens of the Prepetition Lenders in the Prepetition Collateral or the validity of the Prepetition Obligations.

(7) The Debtors have no valid claims (as such term is defined in section 101(5) of the Bankruptcy Code) or causes of action against the Prepetition Agent or any Prepetition Lender with respect to the Prepetition Credit Agreement or any other Prepetition Credit Documents, whether arising at law or at equity, including, without limitation, any re-characterization, subordination, avoidance or other claims arising under or pursuant to sections 105, 510 or 542 through 553, inclusive, of the Bankruptcy Code.

(8) As of the Commencement Date, the Prepetition Obligations for which the Debtors were truly and justly indebted to the Prepetition Lenders, without defense, counterclaim or offset of any kind, aggregated not less than approximately \$222 million, comprised of not less than approximately \$172 million in Prepetition Agent/Revolver Obligations and approximately \$50 million in aggregate principal amount of Prepetition Term Obligations, plus all accrued or hereafter accruing and unpaid interest thereon and any additional fees and expenses (including any attorneys', accountants', appraisers' and financial advisors' fees and expenses that are chargeable or reimbursable under the Prepetition Credit Documents) now or hereafter due under the Prepetition Credit Documents and specifically including the Prepetition Agreement-Expenses (collectively, the "Prepetition Lender Secured Debt").

(9) The aggregate value of the Prepetition Collateral granted or pledged to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, pursuant to the Prepetition Credit Documents, exceeds the aggregate amount of the Prepetition Lender Secured Debt.

F. The Debtors have an immediate and critical need to obtain postpetition financing under the DIP Credit Facility and to use Cash Collateral in order to, among other things, finance the ordinary costs of their operations, maintain business relationships with

vendors, suppliers and customers, make payroll, make capital expenditures, and satisfy other working capital and operational needs. The Debtors' access to sufficient working capital and liquidity through the incurrence of postpetition financing under the DIP Credit Facility and the use of Cash Collateral under the terms of this Interim Order is vital to the preservation and maintenance of the going concern value of the Debtors' estates and to the Debtors' successful reorganization. Consequently, without access to the DIP Credit Facility and the continued use of Cash Collateral, to the extent authorized pursuant to this Interim Order, the Debtors and their estates would suffer immediate and irreparable harm.

G. The Debtors are unable to obtain (i) adequate unsecured credit allowable either (a) under sections 364(b) and 503(b)(1) of the Bankruptcy Code or (b) under section 364(c)(1) of the Bankruptcy Code, (ii) adequate credit secured by (x) a senior lien on unencumbered assets of their estates under section 364(c)(2) of the Bankruptcy Code and (y) a junior lien on encumbered assets under section 364(c)(3) of the Bankruptcy Code, or (iii) secured credit under section 364(d)(1) of the Bankruptcy Code from sources other than the DIP Agent and the DIP Lenders on terms more favorable than the terms of the DIP Credit Facility. The only source of secured credit available to the Debtors, other than the use of Cash Collateral, is the DIP Credit Facility. The Debtors require both additional financing under the DIP Credit Facility and the continued use of Cash Collateral under the terms of this Interim Order in order to satisfy their postpetition liquidity needs.

H. The DIP Agent and the DIP Lenders have indicated a willingness to provide the Debtors with certain financing commitments, but solely on the terms and conditions set forth in this Interim Order and in the DIP Credit Documents. After considering all of their alternatives, the Debtors have concluded, in an exercise of their sound business judgment, that

the financing to be provided by the DIP Lenders pursuant to the terms of this Interim Order and the DIP Credit Documents represents the best financing presently available to the Debtors.

I. Solely on the terms and conditions set forth in this Interim Order and in the DIP Credit Documents, the Prepetition Agent and the Prepetition Revolving Lenders are prepared to consent to: (i) the imposition of certain liens under section 364(d)(1) of the Bankruptcy Code in favor of the DIP Agent, for the benefit of itself and the DIP Lenders, which liens will prime the Primed Liens (as hereinafter defined), and (ii) the Debtors' use of the Prepetition Collateral (including the Cash Collateral), provided that the Court authorizes the Debtors, pursuant to Sections 361, 363 and 364(d) of the Bankruptcy Code, to grant to the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, as and for adequate protection, but subject to the Carve-Out, (1) a replacement security interest in and lien and mortgage upon the DIP Collateral in favor of the Prepetition Agent and the Prepetition Revolving Lenders, which shall be of equal priority with the DIP Liens (the "Prepetition Agent/Revolver Replacement Lien"), (2) a security interest in and lien and mortgage upon the DIP Collateral in favor of the Prepetition Term Lenders, which shall be immediately junior to the DIP Liens and the Prepetition Agent/Revolver Replacement Lien (the "Prepetition Term Replacement Lien" and, together with the Prepetition Agent/Revolver Replacement Lien, the "Prepetition Lender Replacement Liens"), and (3) superpriority administrative expense claims under section 507(b) of the Bankruptcy Code (collectively, the "Adequate Protection Priority Claims"), which priority claims shall, in the case of the Prepetition Term Lenders (the "Term Adequate Protection Priority Claims"), be subordinate in priority to the priority claims of the Prepetition Agent and the Prepetition Revolving Lenders (the "Agent/Revolver Adequate Protection Priority Claims"). The Prepetition Lender Replacement Liens and the Adequate Protection Priority Claims shall secure the payment of the Prepetition Obligations in an amount

equal to the diminution in the value of the Prepetition Lenders' interests in the Prepetition Collateral from and after the Commencement Date including, without limitation, any such diminution resulting from: (i) the use by the Borrower of such collateral and cash constituting proceeds of such collateral, (ii) the imposition of those liens granted to the DIP Lenders which will prime the Primed Liens, (iii) the Carve Out and (iv) the imposition of the automatic stay pursuant to section 362(a) of the Bankruptcy Code (the "Adequate Protection Obligations"), and/or (v) any other reason; provided, however, that any right of payment of the Prepetition Term Lender on account of the Adequate Protection Obligations shall be fully subordinate to any right of payment of the Prepetition Agent or the Prepetition Revolving Lenders on account of the Adequate Protection Obligations. As additional adequate protection, the Prepetition Agent shall be entitled to the ongoing payment of the Prepetition Agreement Expenses, including the fees and expenses of legal counsel and other professionals retained by the Prepetition Agent, as and when due and payable under the Prepetition Credit Documents (without giving effect to any acceleration provision therein).

J. The consent of the Prepetition Agent and the Prepetition Revolving Lenders to the priming of their liens by the DIP Liens (as hereinafter defined) is limited to the DIP Credit Facility presently before the Court, with GE Capital as DIP Agent, and shall not extend to any other postpetition financing or to any modified version of this DIP Credit Facility with any party other than GE Capital as DIP Agent. Furthermore, the consent of the Prepetition Agent and the Prepetition Revolving Lenders to the priming of their liens by the DIP Liens does not constitute, and shall not be construed as constituting, an acknowledgment or stipulation by the Prepetition Agent and the Prepetition Lenders that their interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise.

K. The security interests and liens granted pursuant to this Interim Order to the DIP Agent, for the benefit of itself and the DIP Lenders, are appropriate under section 364(d) of the Bankruptcy Code because, among other things: (i) such security interests and liens do not impair the interests of any holder of a valid, perfected, prepetition security interest or lien in the property of the Debtors' estates, (ii) the holders of such valid, perfected, prepetition security interests and liens have consented to the security interests and priming liens granted pursuant to this Interim Order to the DIP Agent for the benefit of itself and the DIP Lenders, and/or (iii) the interests of any holder of a valid, perfected, prepetition security interest or lien are otherwise adequately protected.

L. Good cause has been shown for immediate entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and (c)(2). In particular, the authorization granted herein for the Debtors to execute the DIP Credit Documents, to continue using Cash Collateral, and to obtain interim financing, including on a priming lien basis, is necessary to avoid immediate and irreparable harm to the Debtors and their estates. Entry of this Interim Order is in the best interest of the Debtors, their estates and creditors. The terms of the DIP Credit Documents (including the Debtors' continued use of Cash Collateral) are fair and reasonable under the circumstances, reflect the Debtors' exercise of prudent business judgment consistent with their fiduciary duties, and are supported by reasonably equivalent value and fair consideration.

M. The Debtors, the DIP Agent, and the Prepetition Agent have negotiated the terms and conditions of the DIP Credit Documents (including the Debtors' continued use of Cash Collateral) and this Interim Order in good faith and at arm's-length, and any credit extended and loans made to the Debtors pursuant to this Interim Order shall be, and hereby are,



deemed to have been extended, issued or made, as the case may be, in "good faith" within the meaning of section 364(e) of the Bankruptcy Code.

N. On or about October 23, 2007, Debtor USA Direct, LLC ("USA Direct"), the Prepetition Agent and Manufacturers and Traders Trust Company ("M&T Bank") entered into that certain Control Agreement (Deposit Accounts) (the "M&T Control Agreement") pursuant to which the parties thereto agreed, inter alia, that, subject to the terms and conditions thereof, M&T Bank would act in accordance with the Prepetition Agent's instructions with respect to the bank accounts maintained at M&T Bank by USA Direct (the "Subject M&T Accounts") identified therein.

O. Based on the foregoing, and upon the record made before this Court at the Interim Hearing, and good and sufficient cause appearing therefor,

**IT IS HEREBY ORDERED, ADJUDGED AND DECREED THAT:**

1. Approval of Motion. The Motion is approved on the terms and conditions set forth in this Interim Order. This Interim Order shall become effective immediately upon its entry. To the extent the terms of the DIP Credit Documents differ in any respect from the terms of this Interim Order, this Interim Order shall control.

2. Approval of DIP Credit Agreement, Authority Thereunder. The terms and conditions of the DIP Credit Agreement are hereby approved. The Debtors are hereby authorized to enter into the DIP Credit Documents, including the DIP Credit Agreement, and such additional documents, instruments, and agreements as may be reasonably required by the DIP Agent to implement the terms or effectuate the purposes of this Interim Order. The Borrower is hereby authorized to borrow money and obtain letters of credit under the DIP Credit Agreement, and the Guarantors are hereby authorized to guaranty such borrowings and the

Borrower's obligations with respect to such letters of credit, in accordance with the terms of this Interim Order, the DIP Credit Agreement, and the other DIP Credit Documents.

3. Use of Cash Collateral and DIP Loans. The Debtors are hereby authorized to use the Cash Collateral and proceeds of DIP Loans (as hereinafter defined) solely in accordance with the Budget (as hereinafter defined) and the financial covenants, availability formulae, and other terms and conditions set forth in the DIP Credit Agreement and this Interim Order.

4. Payment of DIP Fees and Expenses. The Debtors are hereby authorized and directed to pay on demand all fees, expenses and other amounts payable under the terms of the DIP Credit Agreement, including, without limitation, all of the fees specified in the GE Capital Fee Letter (as defined in the DIP Credit Agreement), and all out-of-pocket costs and expenses of the DIP Agent in accordance with the terms of the DIP Credit Agreement (including, without limitation, the prepetition and postpetition fees and disbursements of legal counsel, financial advisors and third-party appraisers and consultants advising the DIP Agent). None of such costs, fees, 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 the Court; provided, however, that the DIP Agent shall submit copies of its professional fee invoices to the Debtors, and the Debtors shall send copies of such invoices to the U.S. Trustee and any Committee within five (5) business days of their receipt thereof; provided further, however, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product, or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. In addition, the Debtors are hereby authorized and directed to indemnify the DIP

Agent and the DIP Lenders against any liability arising in connection with the DIP Credit Documents to the extent set forth in the DIP Credit Documents. All such unpaid fees, expenses and indemnities of the DIP Agent shall constitute DIP Obligations (as hereinafter defined) and shall be secured by the DIP Collateral and afforded all of the priorities and protections afforded to the DIP Obligations under this Interim Order and the DIP Credit Documents.

5. Validity of DIP Credit Documents. Upon execution and delivery of the DIP Credit Documents, the DIP Credit Documents shall constitute valid and binding obligations of the Debtors, enforceable against each Debtor party thereto in accordance with the terms thereof. No obligation, payment, transfer or grant of security under the DIP Credit Documents or this Interim Order shall be stayed, restrained, voided, voidable, or recoverable under the Bankruptcy Code or under any applicable non-bankruptcy law, or subject to any defense, reduction, setoff, recoupment or counterclaim.

6. DIP Loans. All loans and letters of credit made to or for the benefit of the Debtors on or after the Commencement Date under the DIP Credit Documents (collectively, the "DIP Loans"), all interest thereon, and all fees, costs, expenses, indemnification obligations and other liabilities owing by the Debtors to the DIP Agent and the DIP Lenders under the DIP Credit Documents and this Interim Order shall hereinafter be referred to as the "DIP Obligations." The DIP Loans: (i) shall be evidenced by the books and records of the DIP Agent or the DIP Lenders; (ii) shall bear interest payable at the rates set forth in the DIP Credit Agreement; (iii) shall be secured in the manner specified in Paragraph 15 below; (iv) shall be payable in accordance with the terms of the DIP Credit Documents; and (v) shall otherwise be governed by the terms set forth herein and in the DIP Credit Documents.

7. Structure of DIP Credit Facility. The DIP Credit Facility shall consist of (i) a term loan of \$50 million (the "DIP Term Loan A"); (ii) a term loan of \$200 million (the

"DIP Term Loan B" and, together with the DIP Term Loan A, the "DIP Term Loan"; and (iii) a revolving credit facility of \$130 million (the "DIP Revolving Credit Facility" and, collectively with the DIP Term Loan, the "DIP Credit Facility"); provided, however, that the amount of the DIP Revolving Credit Facility set forth in clause (iii) shall be reduced by a reserve in the amount of the Carve-Out (as hereinafter defined) and such other reserves as Agent may establish pursuant to the terms of the DIP Credit Agreement. The aggregate amount of the DIP Loans available under the DIP Revolving Credit Facility shall not exceed \$130 million (the "Maximum Amount"), provided, however, that from and after the entry of this Interim Order and prior to the entry of the Final Order, borrowings under the DIP Credit Facility shall be limited to \$380,000,000, comprised of \$50,000,000 under the DIP Term Loan A, \$200,000,000 under the DIP Term Loan B and up to \$130,000,000 in advances under the DIP Revolving Credit Facility; provided further, however, that the aggregate amount of the DIP Loans available under the DIP Revolving Credit Facility from time to time prior to the Termination Date shall be subject to Borrowing Base limitations, availability criteria and other terms (including in respect of a letter of credit sub-facility and swing line loans), all as set forth in the DIP Credit Agreement.

8. A/R Purchase From Securitization Facility; Repayment of Securitization Provider; Payment of Surviving A/R Obligations. Subject to the terms and conditions contained in this Interim Order and the DIP Credit Agreement, Borrower shall use the proceeds of the DIP Term Loan A that Borrower is authorized to draw down under this Interim Order and a portion of the proceeds of the DIP Revolving Credit Facility to repurchase, upon the entry of this Interim Order and as a condition to the closing of the DIP Credit Facility, from Vertis Receivables all accounts receivable and related property previously conveyed to Vertis Receivables pursuant to the A/R Sale and Servicing Agreement. Vertis Receivables shall use the proceeds of such repurchase to pay, finally, fully and in cash, all obligations (other than the Surviving A/R

Obligations (as defined below)) of Vertis Receivables under the A/R Securitization Facility such that the accounts receivable and other assets owned as of the Commencement Date by Vertis Receivables (including, without limitation, all of its bank accounts, lockboxes and its rights and obligations under various lockbox and blocked account agreements, the "Purchased Facility Assets") shall be, on account of such final and full payment in cash, free and clear of any and all liens, claims, encumbrances and/or other interests (other than Surviving A/R/ Obligations (as defined below) and except as expressly set forth herein). The Purchased Facility Assets shall become the property of Borrower's estate (such transaction, the "A/R Purchase"); provided, however, that the Surviving A/R Obligations shall survive and Borrower shall assume the Surviving A/R Obligations pursuant to an agreement in form and substance acceptable to the Securitization Provider. Borrower shall use the necessary proceeds of the DIP Revolving Credit Facility to pay the Surviving A/R Obligations (whether incurred prior or subsequent to the Commencement Date and at the time and in the manner due under the A/R Securitization Facility).

9. Repayment of Prepetition Revolving Credit Advances; Continuing Payment of Prepetition Agreement Expenses. Subject to the terms and conditions contained in this Interim Order and the DIP Credit Agreement and as and for, inter alia, adequate protection, Borrower shall use the proceeds of the DIP Term Loan B, upon the entry of this Interim Order and as a condition to the closing of the DIP Credit Facility, to provide cash collateral for the Prepetition Letters of Credit in an amount equal to 102% of the face amount of such Prepetition Letters of Credit and to pay in full all other outstanding Prepetition Agent/Revolver Obligations. To the extent that there are available any proceeds of the DIP Term Loan B following satisfaction of the obligations described in the preceding sentence, Borrower shall repay a portion of the DIP Revolving Credit Facility in an amount equal to such remaining proceeds

(without any corresponding reduction in the commitments thereunder). Borrower also shall use the necessary proceeds of the DIP Revolving Credit Facility to pay and reimburse the Prepetition Agent (including, without limitation, in its capacity as "Collateral Agent" under the Prepetition Security Agreement) for the Prepetition Agreement Expenses (together with the Surviving A/R Obligations, the "Lender Expense Claims") as and when due under the terms of the Prepetition Credit Documents. Borrower also may use the necessary proceeds of the DIP Revolving Credit Facility to pay and reimburse the Prepetition Term Lender Expense Claims (as defined herein) as, to the extent and when due under the terms of the Prepetition Credit Documents.

10. Other Use of DIP Loans and Cash Collateral. Subject to the terms and conditions set forth in this Interim Order and in the DIP Credit Documents, the Debtors may use the DIP Loans and the Cash Collateral, in accordance with the Budget (as defined below), to: (i) pay interest, fees and expenses associated with the DIP Credit Facility, as provided in the DIP Credit Documents; (ii) prior to an event of default under the DIP Credit Facility, pay (X) professional fees and expenses in accordance with Section 5.05 of that certain Restructuring and Lock-Up Agreement dated as of May 22, 2008 among, *inter alia*, Borrower, various of Borrower's affiliates, ACG Holdings, Inc. and its subsidiaries (the "Acquired Business"), certain creditors of the Acquired Business, certain Vertis Second Lien Noteholders, certain holders of the Vertis Senior Notes (as defined in the Motion), and certain holders of the Vertis Senior Subordinated Notes (as defined in the Motion) (the "Restructuring Agreement"), and (Y) ordinary course indenture trustee fees and expenses pursuant to the existing terms of the indentures governing the Vertis Second Lien Notes, the Vertis Senior Notes (as defined in the Motion) and/or the Vertis Senior Subordinated Notes (as defined in the Motion); and (v) prior to and up to an event of default under the DIP Credit Facility with respect to which a Carve-Out Trigger Notice (as defined below) is delivered to the Debtors, pay fees and expenses of

professionals retained by Borrower or the official committee of unsecured creditors (if any), to the extent set forth in the Budget and subject to such carve-outs as may be agreed to by DIP Agent and DIP Lenders, to the extent such professional fees and expenses are approved in accordance with compensation procedures approved by the Bankruptcy Court and in form and substance acceptable to the DIP Agent; provided, however, that Borrower and Guarantors shall be prohibited from making any payment under the Restructuring Agreement (whether on account of adequate protection, reimbursement of professional or indenture trustee fees and expenses or otherwise) until the Prepetition Revolving Credit Advances have been repaid in full in cash and the Prepetition Letter of Credit Obligations have been repaid or cash collateralized in full in cash; (iii) make the adequate protection payments set forth in the Restructuring Agreement and the Budget (as defined below) and adequate protection cash interest payments at the non-default contractual rate in respect of the Prepetition Term Loan under the Prepetition Credit Agreement (the "Prepetition Term Adequate Protection Cash Payments") and, subject to approval of the Court, such other adequate protection payments of other prepetition debt as are acceptable to DIP Agent and set forth in the Budget (as defined below); and (iv) fund general, ordinary course corporate and working capital requirements of the Debtors, in each case in accordance with the Budget (as defined below) and the terms of the DIP Credit Documents.

11. Conformity with Budget. Subject to and in accordance with the terms of the DIP Credit Agreement, the Borrower shall from time to time prepare and provide to the DIP Agent detailed budgets, substantially in the form of the initial budget attached hereto as Exhibit B (each, a "Budget" and, collectively, the "Budgets"). Borrower may use the proceeds of the DIP Loans and the Cash Collateral solely for the purposes and up to the amounts set forth in the Budget, subject to the terms and conditions set forth in the DIP Credit Agreement and this Interim Order. Payment by the Debtors of expenses other than the itemized amounts set forth in

the Budget shall constitute an Event of Default (as hereinafter defined) unless the DIP Agent consents to such non-conforming payments in writing.

12. Application of Proceeds. All proceeds of DIP Collateral included in the DIP Borrowing Base collected after the Commencement Date shall be applied to the DIP Obligations (and, after an Event of Default (as defined hereinafter) and acceleration, to the DIP Obligations and the Lender Expense Claims), in the manner set forth in the DIP Credit Agreement.

13. Mandatory and Voluntary Prepayments. Borrower shall make mandatory prepayments and may make voluntary prepayments of the DIP Loans as and when provided under, and for application in accordance with, the terms of the DIP Credit Agreement.

14. Continuation of Prepetition Liens; Prepetition Liens Securing DIP Obligations and Surviving A/R Obligations. Until payment in full of all of the obligations of the Borrower and the Guarantors with respect to the DIP Credit Facility and the Prepetition Credit Agreement, and termination of the DIP Lenders' commitments under the DIP Credit Facility, and until such time as the Prepetition Obligations shall have been allowed in full without the possibility of any further challenge, all liens and security interests of the Prepetition Agent and Prepetition Lenders (including, without limitation, liens granted for adequate protection purposes) shall remain valid and enforceable with the same continuing priority as described herein. Notwithstanding any payment of all or any portion of the Prepetition Obligations, the Prepetition Liens shall continue in full force and effect and shall, and shall be deemed to, secure the full and timely payment of the DIP Obligations (separate from and in addition to the DIP Liens granted to the DIP Agent and the DIP Lenders in Paragraph 15 below) until the payment in full of all of the DIP Obligations and the termination of the DIP Lenders' commitments under the DIP Credit Facility. Until payment in full of all of the obligations of the Borrower and the



Guarantors with respect to the DIP Credit Facility and the A/R Sale and Servicing Agreement, and termination of the DIP Lenders' commitments under the DIP Credit Facility, and until such time as the Surviving A/R Obligations shall have been allowed in full without the possibility of any further challenge, all liens and security interests of the Securitization Provider (including, without limitation, liens granted for adequate protection purposes) shall remain valid and enforceable with the same continuing priority as described herein. Notwithstanding any payment of all or any portion of the Surviving A/R Obligations, the A/R Obligations Prepetition Liens shall continue in full force and effect and shall, and shall be deemed to, secure the full and timely payment of the Surviving A/R Obligations until the payment in full of all of the Surviving A/R Obligations and the termination of the DIP Lenders' commitments under the DIP Credit Facility.

15. DIP Liens and DIP Collateral. As security for the full and timely payment of the DIP Obligations, the DIP Agent, for the benefit of the DIP Agent and the DIP Lenders, is hereby granted, pursuant to sections 364(c)(2), 364(c)(3) and 364(d)(1) of the Bankruptcy Code, valid, enforceable, unavoidable, and fully perfected security interests in and liens and mortgages (collectively, the "DIP Liens") upon all existing and after-acquired tangible and intangible personal and real property and assets (including, without limitation, accounts receivable, inventory, equipment, fee and leasehold interests in real property, general intangibles, intercompany notes, cash, deposit accounts, rights, claims and causes of action (including causes of action under section 549 of the Bankruptcy Code and, upon entry of the Final Order, any other avoidance actions under chapter 5 of the Bankruptcy Code (other than the causes of action under section 549 of the Bankruptcy Code, the "Avoidance Actions")), the Purchased Facility Assets and all products and proceeds of the foregoing) of Borrower and each Guarantor, including, without limitation, 100% of the outstanding equity interests in their subsidiaries that are not Excluded Foreign Subsidiaries (as defined in the DIP Credit Agreement) and 66% of the

outstanding equity interests in their first tier Excluded Foreign Subsidiaries and all products and proceeds thereof (collectively, the "DIP Collateral").

16. Priority of DIP Liens. Subject to the Carve-Out, the DIP Liens: (a) shall constitute first-priority security interests in and liens upon all DIP Collateral that is not otherwise subject to any valid, perfected, enforceable and non-avoidable lien in existence as of the Commencement Date, pursuant to section 364(a)(2) of the Bankruptcy Code; (b) shall be senior to and prime (i) the Prepetition Liens, the Vertis Second Liens and the A/R Obligations Prepetition Liens, (ii) the Prepetition Term Replacement Lien and the Vertis Second Lien Noteholders' Replacement Lien (as hereinafter defined) and (iii) any and all other claims, rights or liens against the Debtors in existence as of the Commencement Date (including, without limitation, any reclamation claims, rights or liens), which are junior in right or priority, or otherwise subject, to the Prepetition Liens ((i), (ii) and (iii) above, collectively, the "Primed Liens") pursuant to section 364(d)(1) of the Bankruptcy Code; (c) shall be *pari passu* in priority to the Prepetition Agent/Revolver Replacement Lien and the Securitization Provider's Replacement Lien (collectively, the "Pari Passu Liens") pursuant to section 364(d)(1) of the Bankruptcy Code, and (d) pursuant to section 364(c)(3) of the Bankruptcy Code, shall be immediately junior in priority to any and all other valid, perfected, enforceable and non-avoidable liens in existence as of the Commencement Date that are senior in priority to the Prepetition Liens (collectively, the "Senior Non-Primed Liens"); provided, however, that the DIP Liens shall be junior to the <sup>Senior</sup> Non-Primed Liens only with respect to the collateral encumbered by any such <sup>Senior</sup> Non-Primed Liens; <sup>and (a) pursuant to Section 364(a)(2) of the Bankruptcy Code, shall be immediately junior in priority to any and all other valid, perfected, enforceable and non-avoidable liens in existence as of the Commencement Date that are junior in priority to the Prepetition Liens collectively, the "Junior Non-Primed Liens"; provided, however, that the holder of any Junior Non-Primed Lien is provided adequate protection therefor; approved to the extent that</sup> <sup>Automatic Effectiveness of Liens.</sup> The DIP Liens, the Pari Passu Liens, the Prepetition Term Replacement Lien and the Vertis Second Lien Noteholder Replacement Lien (as defined herein) shall not be subject to challenge and shall attach and become valid, perfected, <sup>and that it is acceptable to the DIP Agent and the DIP Lenders, the DIP Liens shall be senior to such Junior Non-Primed Liens pursuant to Section 364(a)(1) of the Bankruptcy Code; provided, however, further, that to the extent that the DIP Liens are junior to the Junior Non-Primed Liens, they shall be junior only with respect to the collateral encumbered by any such Junior Non-Primed Liens. As used herein, the term "Non-Primed Liens" shall mean all Senior Non-Primed Liens and all Junior Non-Primed Liens to which the holders thereof have not received adequate protection in accordance with the first proviso to clause (a) of the preceding</sup>

Rider to be placed at the end of paragraph 16:

With respect to the paid ~~loss~~ deposit or other funds held by ACE America Insurance Company and its affiliates (collectively, "ACE") to secure the Debtors' deductibles and other obligations arising under the Insurance policies and related agreements (but only to the extent that ACE has a properly perfected lien against and security interest in such funds), any lien granted under this Interim Order shall not extend to such funds but only to Debtors' reversionary rights, if any, in such funds.

enforceable, non-avoidable and effective by operation of law as of the Commencement Date without any further action by the Debtors, the DIP Agent, the DIP Lenders, the Prepetition Agent, the Prepetition Lenders or the 9 ¼% Indenture Trustee, and without the necessity of execution by the Debtors, 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 other documents or the taking of any other actions. All DIP Collateral shall be free and clear of other liens, claims and encumbrances, except the Primed Liens, the Pari Passu Liens, the Non-Primed Liens, and other permitted liens and encumbrances as provided in the DIP Credit Agreement. If the DIP Agent hereafter requests that the Debtors execute and deliver to the DIP Agent financing statements, security agreements, collateral assignments, mortgages, or other instruments and documents considered by the DIP Agent to be reasonably necessary or desirable to further evidence the perfection of the DIP Liens, the Debtors are hereby authorized and directed to execute and deliver such financing statements, security agreements, mortgages, collateral assignments, instruments, and documents, and the DIP Agent is hereby authorized to file or record such documents in its discretion, 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.

18. DIP Lenders' Superpriority Claims. In addition to the priming liens and security interests granted to the DIP Agent pursuant to this Interim Order, subject to the Carve-Out (as defined in Paragraph 19 hereof) and in accordance with sections 364(c)(1), 503 and 507 of the Bankruptcy Code, all of the DIP Obligations (including, without limitation, all DIP Loans) shall constitute allowed superpriority administrative expense claims (the "DIP Superpriority Claims") with priority over any and all administrative expenses of the Debtors, whether heretofore or hereafter incurred, of the kind specified in, or ordered pursuant to, sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b) or 726 or any other provisions of the

Bankruptcy Code, which Superpriority Claims shall be payable from and have recourse to all prepetition and postpetition property of the Debtors, including Avoidance Actions, and all proceeds thereof. In the event Superpriority Claims arise with respect to more than one of the DIP Revolving Credit Facility, the DIP Term Loan A and the DIP Term Loan B, then (i) any DIP Superpriority Claims for amounts outstanding under the DIP Revolving Credit Facility shall enjoy priority over any DIP Superpriority Claims for amounts outstanding under the DIP Term Loan A or DIP Term Loan B, and (ii) any DIP Superpriority Claims for amounts outstanding under the DIP Term Loan A shall have equal priority with any DIP Superpriority Claims for amounts outstanding under the DIP Term Loan B.

19. Carve Out. Upon and following an Event of Default with respect to which a Carve-Out Trigger Notice (as defined herein) is issued, to the extent unencumbered funds are not available to pay administrative expenses in full, the DIP Liens, the DIP Superpriority Claims, the Securitization Adequate Protection Priority Claims, the Adequate Protection Priority Claims, the Vertis Second Lien Noteholder Adequate Protection Priority Claims (as defined herein), the Pari Passu Liens and the Primed Liens shall be subject to the payment of the Carve-Out. For purposes of this Order, the "Carve-Out" shall mean, collectively: (i) the payment of fees pursuant to 28 U.S.C. 1930(a)(6) and 28 U.S.C. §156(c); (ii) as of the date of the Carve-Out Trigger Notice, payment of allowed accrued and unpaid professional fees and expenses incurred by the Debtors (excluding any incurred and unpaid professional fees and expenses of any of the agents or lenders payable pursuant to this Interim Order), and any Committee (collectively, the "Professionals") in an amount not in excess of \$1,000,000 plus all unpaid professional fees and expenses incurred prior to the occurrence of an Event of Default to the extent set forth in the Budget and to the extent allowed by the Bankruptcy Court at any time (the "Professionals' Carve-Out"); provided, however, that the Professionals' Carve-Out shall be reduced, dollar-for-

dollar, by the amount of any fees and expenses paid to the Professionals following delivery of a Carve-Out Trigger Notice to the Debtors (except to the extent (but in no event greater than \$750,000) that such fees and expenses are paid out of a retainer held by lead counsel to the Debtors as of the Commencement Date); provided further, however, that the DIP Agent shall be entitled to reduce, from time to time, the Borrowing Availability under the DIP Credit Agreement by the amount of the Professionals' Carve-Out that would exist if a Carve-Out Trigger Notice were issued at such time; and (iii) pursuant to Bankruptcy Code section 726, in the event these cases are converted to chapter 7, a separate and additional amount of \$50,000 in the aggregate that may be used (subject to Paragraph 19 below (other than the proviso thereto)) for the reasonable fees and expenses of a chapter 7 trustee. Notwithstanding the foregoing, so long as a Carve-Out Trigger Notice has not been issued, the Debtors shall be permitted to pay fees to estate professionals and reimburse expenses incurred by estate professionals to the extent set forth in the Budget and that are allowed and payable under sections 328, 330 and 331 of the Bankruptcy Code and compensation procedures approved by the Bankruptcy Court, as the same may be due and payable, and the same shall not reduce the Professionals' Carve-Out. In any event, the DIP Agent and the Prepetition Agent reserve the right to review and object to any fee statement, interim application or monthly application issued or filed by estate professionals. Notwithstanding any provision (including, without limitation, any "variance" or similar provision) of this Interim Order, any Final Order or the DIP Credit Agreement to the contrary, aggregate cumulative expenditures for restructuring professional fees (other than professional fees incurred by the DIP Agent, DIP Lenders or the Prepetition Agent) shall not exceed 100% of the amount with respect thereto set forth in the Budget.

20. Investigation of Prepetition Liens. No portion of the DIP Credit Facility, the DIP Collateral, the Prepetition Collateral, the Cash Collateral, or the Carve-Out, and no

disbursements set forth in the Budget, shall be used for the payment of professional fees, disbursements, costs or expenses incurred in connection with asserting any claims or causes of action (i) against the Prepetition Agent, the Prepetition Lenders, the DIP Agent, or the DIP Lenders, including, without limitation, any action challenging or raising any defenses to the Prepetition Obligations or the DIP Obligations, or the liens of the Prepetition Agent, the Prepetition Lenders, the DIP Agent, or the DIP Lenders, or (ii) against Vertis Receivables or the Securitization Provider, including, without limitation, any action challenging or raising any defenses to the Surviving A/R Obligations or the liens of the Securitization Provider, or any actions or claims arising out of or in any way related to the A/R Securitization Facility; provided, however, that no more than \$50,000 of the proceeds of the DIP Credit Facility or the DIP Collateral may be used by any Committee to investigate the prepetition liens and claims of the Prepetition Agent, the Prepetition Lenders and the Securitization Provider.

21. Cash Management System. The Debtors are authorized and directed to establish and maintain the cash management system described in the DIP Credit Agreement (the "Cash Management System"). The Cash Management System and all accounts established in connection therewith shall be used for the purposes and on the terms and conditions set forth in the DIP Credit Agreement and the other DIP Credit Documents. The Debtors are further authorized and directed to enter into any additional agreements providing for the establishment of lock boxes, blocked accounts, or similar arrangements in favor of the DIP Agent for purposes of facilitating cash collections from the Debtors in accordance with the terms of the DIP Credit Agreement. Except to the extent otherwise expressly set forth in the DIP Credit Agreement, the Debtors shall remit to the DIP Agent all Cash Collateral in or that comes into the Debtors' possession for application to the DIP Obligations in accordance with the terms of the DIP Credit Agreement.

22. Shared Control Between Prepetition Agent and DIP Agent. The

Prepetition Agent shall immediately share dominion and control with the DIP Agent with respect to each depository account of the Debtors or other third party that was subject to a deposit account control agreement with the Prepetition Agent as of the Commencement Date (including, without limitation, existing deposit account control agreements among one of the Debtors, the Prepetition Agent and Bank of America, N.A. and the M&T Control Agreement), and each of such deposit account control agreements shall hereafter be enforceable by the DIP Agent against, and binding upon, each depository institution party thereto until the DIP Obligations have been paid in full in cash and the DIP Credit Agreement shall have been terminated, after which such deposit account control agreements shall again be solely enforceable by the Prepetition Agent.

23. Adequate Protection for Prepetition Lenders. As adequate protection for

the payment of the Adequate Protection Obligations, subject to the Carve-Out, the Prepetition Agent, for the benefit of itself and the Prepetition Lenders, shall be, and hereby is, granted the Prepetition Agent/Revolver Replacement Lien, the Prepetition Term Replacement Lien and the Adequate Protection Priority Claims (each as defined in Paragraph I above). The Prepetition Agent/Revolver Replacement Lien shall be *pari passu* with the DIP Liens and the Securitization Provider's Replacement Lien, junior to the Non-Primed Liens with respect to the collateral encumbered by any such Non-Primed Liens, and senior to any other liens, including, without limitation, to the Primed Liens. The Prepetition Term Replacement Lien shall be junior to the DIP Liens, the Pari Passu Liens, the Prepetition Liens and the A/R Obligations Prepetition Liens, junior to the Non-Primed Liens with respect to the collateral encumbered by any such Non-Primed Liens, and senior to any other liens, including, without limitation, the Vertis Second Liens and the Vertis Second Lien Noteholders' Replacement Lien. The Agent/Revolver Adequate Protection Priority Claims shall be equal in priority to the Securitization Adequate



Protection Priority Claims and the DIP Superpriority Claims, and senior in priority to the Term Adequate Protection Priority Claims and the Vertis Second Lien Noteholder Adequate Protection Priority Claims. The Term Adequate Protection Priority Claims shall be junior in priority to the DIP Superpriority Claims, the Securitization Adequate Protection Priority Claims and the Agent/Revolver Adequate Protection Priority Claims, but senior in priority to the Vertis Second Lien Noteholder Adequate Protection Priority Claims. As additional adequate protection, (i) the Prepetition Agent shall be entitled to the ongoing payment of the Prepetition Agreement Expenses, including the fees and expenses of legal counsel and other professionals retained by the Prepetition Agent, as and when due and payable under the Prepetition Credit Documents (without giving effect to any acceleration provision therein); and (ii) except for the DIP Credit Facility and the DIP Liens granted to the DIP Agent and the DIP Lenders and the Surviving A/R Obligations and the Securitization Provider's Replacement Lien granted to the Securitization Provider pursuant to this Interim Order, the Debtors shall be prohibited from incurring additional indebtedness with claim status with priority over the Prepetition Obligations or liens equal to or senior in priority to the Prepetition Liens or the A/R Obligations Prepetition Liens, provided that the Debtors may incur liens which constitute Permitted Encumbrances, as such term is defined in the DIP Credit Agreement, or are otherwise permitted pursuant to Section 5.2(a) of the DIP Credit Agreement. As adequate protection for the Prepetition Term Lenders, the Prepetition Term Lenders shall receive: (i) the Prepetition Term Adequate Protection Cash Payments; (ii) payment by no later than thirty (30) days after receipt by the Debtors of the applicable invoice of up to \$50,000 of the customary, reasonable and documented out-of-pocket attorneys' fees, costs and expenses incurred prior to the Commencement Date; (iii) the payment of the customary, reasonable and documented out-of-pocket attorneys' fees, costs and expenses incurred after the Commencement Date (the "Prepetition Term Lender Expense Claims") in

accordance with the terms and conditions of the Prepetition Credit Agreement; and (iv) on the date that is the *earlier* of: (AA) the effective date of the Vertis Prepackaged Plan; and (BB) subject to payment in full, in cash of all obligations under the DIP Credit Facility and the A/R Securitization Facility (other than the Surviving A/R Obligations) and the payment in full in cash (or, as applicable, cash collateralization at 102%) of all Prepetition Agent/Revolver Obligations, the date of payment by the Debtors of any claim on account of principal under the Vertis Second Lien Notes or under the Vertis Senior Notes, a (1) cash payment equal to the difference between interest accrued on the Prepetition Term Loan at the default rate under the Prepetition Credit Agreement from and after the Commencement Date minus the Prepetition Term Adequate Protection Cash Payments, and (2) a work fee of 0.10% (10 basis points) of the principal amount of the Prepetition Term Loan. Additionally, the Debtors have agreed that the Prepetition Term Lenders will receive the unimpaired treatment option under the Vertis Prepackaged Plan. Nothing herein shall preclude the Prepetition Agent or the Prepetition Lenders (other than the Prepetition Term Lenders) from seeking additional adequate protection of their interests in the Prepetition Collateral or from seeking the termination of the Debtors' use of Cash Collateral upon the occurrence of an Event of Default. Notwithstanding anything in the prior sentence to the contrary, the Prepetition Term Lenders shall not be prohibited under this Interim Order from seeking additional adequate protection of their interests in the Prepetition Collateral; provided, however, that all parties in interest reserve all rights and defenses (including, in either event and without limitation, under the Prepetition Credit Agreement) with respect to any such action by the Prepetition Term Lenders. Furthermore, nothing herein shall be construed as an acknowledgment or stipulation by the Prepetition Agent or the Prepetition Lenders that their interests in the Prepetition Collateral are adequately protected pursuant to this Interim Order or otherwise.

24. Adequate Protection for Securitization Provider. As adequate protection for any postpetition diminution in the value of the Securitization Provider's interest in the Securitization Collateral and subject to the Carve-Out, the Securitization Provider is hereby granted: (a) pursuant to sections 361, 363 and 364(d) of the Bankruptcy Code, a valid, enforceable, unavoidable, and fully perfected security interest in and lien and mortgage (collectively, the "Securitization Provider's Replacement Lien") upon the DIP Collateral, and (b) an administrative priority claim under section 507(b) of the Bankruptcy Code (the "Securitization Provider's Adequate Protection Priority Claims"). The Securitization Provider's Replacement Lien and Securitization Adequate Protection Priority Claims shall secure the payment of the Surviving A/R Obligations in an amount equal to any diminution in the value of the Securitization Provider's interests in the Securitization Collateral from and after the Commencement Date. The Securitization Provider's Replacement Lien shall be pari passu with the DIP Liens and the Prepetition Agent/Revolver Replacement Lien, junior to the Non-Primed Liens with respect to the collateral encumbered by any such Non-Primed Liens, and senior to any other liens, including, without limitation, to the Primed Liens. The Securitization Adequate Protection Priority Claims shall share equal priority with the Agent/Revolver Adequate Protection Priority Claims and the DIP Superpriority Claims and shall be senior in priority to the Term Adequate Protection Priority Claims and the Vertis Second Lien Noteholder Adequate Protection Priority Claims.

25. Adequate Protection for Vertis Second Lien Noteholders. As adequate protection for any postpetition diminution in the value of the Vertis Second Lien Noteholders' interest in the Prepetition Collateral and subject to the Carve-Out, GE Capital, as Collateral Agent under the Prepetition Security Agreement, on behalf of the Vertis Second Lien Noteholders is hereby granted: (a) effective as of the date of this Interim Order, payment in cash

of all accrued but unpaid interest to the date hereof at the non-default contract rate, together with interest on the accrued but unpaid interest that was due and payable on April 1, 2008 from April 1, 2008 through and including the date hereof; (b) subsequent to the date hereof and through and including the effective date of the Vertis Prepackaged Plan, payment in cash on a monthly basis of all interest accruing on the Vertis Second Lien Notes at the non-default contract rate; (c) subject to this Interim Order, payment of fees and reimbursement of expenses of the Vertis Second-Lien Noteholder Advisors (as defined in the Restructuring Agreement) and the 9 3/4% Indenture Trustee in accordance with the terms of the Restructuring Agreement; (d) pursuant to sections 361, 363 and 364(d) of the Bankruptcy Code, a replacement lien and security interest (the "Vertis Second Lien Noteholder Replacement Lien") in all of the DIP Collateral; and (e) an administrative priority claim under section 507(b) of the Bankruptcy Code (the "Vertis Second Lien Noteholder Adequate Protection Priority Claims"); provided, however, that Borrower and Guarantors shall be prohibited from making any payment under the Restructuring Agreement (whether on account of adequate protection, reimbursement of professional or indenture trustee fees and expenses or otherwise), including, without limitation, those payments described in subsections (a), (b) and (c) of the preceding sentence, until the Pre Petition Revolving Credit Advances have been repaid in full in cash and the Pre Petition Letter of Credit Obligations have been repaid or cash collateralized in cash at 102%. The Vertis Second Lien Noteholder Replacement Lien and Vertis Second Lien Noteholder Adequate Protection Priority Claims shall secure the payment of the Vertis Second Lien Noteholder Obligations in an amount equal to any diminution in the value of the Vertis Second Lien Noteholders' interests in the Prepetition Collateral from and after the Commencement Date. The Vertis Second Lien Noteholder Adequate Protection Liens shall be junior in priority to the DIP Liens, the Pari Passu Liens and all remaining Primed Liens, and junior to the Non-Primed Liens with respect to the collateral

encumbered by any such Non-Primed Liens. The Vertis Second Lien Noteholder Adequate Protection Priority Claims shall be junior in priority to the DIP Superpriority Claims, the Securitization Adequate Protection Priority Claims and to the Adequate Protection Priority Claims. Adequate protection payments on account of (a) of paragraph 25 of this Interim Order shall be made to the holders of Vertis Second Lien Notes of record on July 7, 2008 (the "Record Date").<sup>3</sup> The Debtors shall make payment of the adequate protection payments on account of section (a) of paragraph 25 of this Interim Order to the 9 ¾% Indenture Trustee (for distribution to the Vertis Second Lien Noteholders as of the Record Date) on or before July 21, 2008. Adequate protection payments on account of section (b) of paragraph 25 of this Interim Order shall be made on or before the twenty-second (22<sup>nd</sup>) day of the applicable month to holders of Vertis Second Lien Notes of record on the earlier of (a) the fifteenth day (15<sup>th</sup>) of such month and (b) seven (7) days prior to the date that such adequate protection payments are made (the "Monthly Record Date"), with such payments to be made by the Debtors to the 9 ¾% Indenture Trustee (for distribution to the Vertis Second Lien Noteholders as of the applicable Monthly Record Date). The foregoing dates shall be deemed the record dates under the 9 ¾% Indenture for purposes of the adequate protection payments described above..

26. 506(c) Waiver. Upon the entry of the Final Order, the Debtors shall irrevocably waive and shall be prohibited from asserting any surcharge claim, under section 506(c) of the Bankruptcy Code or otherwise, for any costs and expenses incurred in connection with the preservation, protection or enhancement of, or realization by the DIP Agent, the DIP Lenders, the Securitization Provider, the Prepetition Agent or the Prepetition Lenders upon, the DIP Collateral, the Securitization Collateral or the Prepetition Collateral. In no event shall the

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<sup>3</sup> The Debtors established the Record Date pursuant to a prepetition notice sent to the Vertis Second Lien Noteholders on July 7, 2008 in accordance with the terms and conditions of the 9 ¾% Indenture.

DIP Agent or the DIP Lenders be subject to the equitable doctrine of marshaling or any similar doctrine with respect to the DIP Collateral.

27. Restrictions on Granting Post-Petition Liens. Except for the Carve-Out, Permitted Encumbrances (as defined in the DIP Credit Agreement) and liens otherwise permitted pursuant to Section 5.2(a) of the DIP Credit Agreement, no claim or lien having a priority superior to or pari passu with those granted pursuant to this Interim Order to the DIP Agent and the DIP Lenders, the Securitization Provider or the Prepetition Agent and the Prepetition Lenders, respectively, shall be granted or allowed while any portion of the DIP Credit Facility (or any refinancing thereof), the Revolving Loan Commitments (as defined in the DIP Credit Agreement) thereunder, the DIP Obligations, the Surviving A/R Obligations, or the adequate protection obligations owing to the Prepetition Lenders, the Securitization Provider and the Vertis Second Lien Noteholders remain outstanding; provided, however, that any liens constituting Permitted Encumbrances (as defined in the DIP Credit Agreement) or otherwise permitted pursuant to Section 5.2(a) of the DIP Credit Agreement shall have the same relative priority vis-à-vis the DIP Liens as they have vis-à-vis the Prepetition Liens. Except as expressly permitted by the DIP Credit Agreement, the Debtors shall not grant mortgages, security interests, or liens in the DIP Collateral to any parties pursuant to section 364(d) of the Bankruptcy Code or otherwise.

28. Beneficiaries of Order. The provisions of this Interim Order shall be binding upon and inure to the benefit of the DIP Agent, the DIP Lenders, the Securitization Provider, the Prepetition Agent, the Prepetition Lenders, the Vertis Second Lien Noteholders, the Debtors, and their respective successors and assigns (including, without limitation, any trustee or other fiduciary hereafter appointed for or on behalf of any Debtor's estate or with respect to its property).

29. Survival of Order. The provisions of this Interim Order and any actions taken pursuant thereto (a) shall survive the entry of any order: (i) confirming any plan of reorganization in any of the Vertis Debtors' Reorganization Cases; (ii) converting any of the Vertis Debtors' Reorganization Cases to a case under chapter 7 of the Bankruptcy Code; or (iii) dismissing any of the Vertis Debtors' Reorganization Cases; and (b) shall continue in full force and effect notwithstanding the entry of any such order, and the claims, liens, and security interests granted pursuant to this Interim Order shall maintain their priority as provided by this Interim Order until all of the DIP Obligations are indefeasibly paid in full and discharged in accordance with the terms of the DIP Credit Agreement. The DIP Obligations shall not be discharged by the entry of any order confirming any plan of reorganization in any of the Vertis Debtors' Reorganization Cases, and the Debtors shall, and shall be deemed to, waive any such discharge pursuant to section 1141(d)(4) of the Bankruptcy Code.

30. Protection under Section 364(e). If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, modification, vacation or stay shall not affect (i) the validity of any DIP Obligations, Surviving A/R Obligations or adequate protection obligations owing to the Prepetition Lenders, the Securitization Provider and the Vertis Second Lien Noteholders incurred prior to the actual receipt by the DIP Agent, the Securitization Provider, the Prepetition Agent, or the 9 ¾% Indenture Trustee, as applicable, of written notice of the effective date of such reversal, modification, vacation or stay, or (ii) the validity or enforceability of any claim, lien, security interest or priority authorized or created hereby or pursuant to the DIP Credit Documents with respect to any DIP Obligations, Surviving A/R Obligations or adequate protection obligations owing to the Prepetition Lenders, the Securitization Provider and the Vertis Second Lien Noteholders. Notwithstanding any such reversal, modification, vacation or stay, any use of Cash

Collateral or the incurrence of DIP Obligations, Surviving A/R Obligations, or adequate protection obligations owing to the Prepetition Lenders, the Securitization Provider and the Vertis Second Lien Noteholders by the Debtors prior to the actual receipt by the DIP Agent, the Securitization Provider, the Prepetition Agent, or the Indenture Trustee, 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 this Interim Order, and the DIP Agent, the DIP Lenders, the Securitization Provider, the Prepetition Agent, the Prepetition Lenders and the 9 ¾% Indenture Trustee shall be entitled to all of the rights, remedies, protections and benefits granted under section 364(e) of the Bankruptcy Code, this Interim Order, and the DIP Credit Documents with respect to all uses of Cash Collateral and the incurrence of DIP Obligations, Surviving A/R Obligations and adequate protection obligations owing to the Prepetition Lenders, the Securitization Provider and the Vertis Second Lien Noteholders.

31. Events of Default. Except as otherwise provided in this Interim Order or to the extent the DIP Agent may otherwise agree in writing, any violation of any of the terms of this Interim Order or any occurrence of an "Event of Default" pursuant to section 7.1 of the DIP Credit Agreement shall constitute an event of default ("Event of Default").

32. Modification of Stay. The automatic stay provisions of section 362 of the Bankruptcy Code are hereby vacated and modified to the extent necessary to permit the DIP Agent and the DIP Lenders to exercise, upon the occurrence and during the continuation of any Event of Default, all rights and remedies provided for in the DIP Credit Documents, and to take any or all of the following actions without further order of or application to this Court:

(a) immediately terminate the Debtors' use of Cash Collateral and cease making any DIP Loans to the Debtors; (b) immediately declare all DIP Obligations to be immediately due and payable and require the Debtors to cash collateralize all Letter of Credit Obligations (as defined in the



DIP Credit Agreement) as provided in the DIP Credit Agreement; (c) immediately terminate the Revolving Loan Commitments; (d) immediately set off any and all amounts in accounts maintained by the Debtors with the DIP Agent or any of the DIP Lenders against the DIP Obligations, or otherwise enforce rights against the DIP Collateral in the possession of any of the DIP Lenders for application towards the DIP Obligations; and (e) take any other actions or exercise any other rights or remedies permitted under this Interim Order, the DIP Credit Documents or applicable law to effect the repayment of the DIP Obligations; provided, however, that the DIP Agent shall provide five (5) days written notice (by facsimile, telecopy or otherwise) to counsel to the Debtors, counsel to any Committee, and counsel to the U.S. Trustee prior to exercising any setoff or other lien enforcement rights or remedies (other than cash dominion rights or remedies) with respect to the DIP Collateral. Upon entry of this Interim Order, no party in interest shall have the right to contest the enforcement of the remedies set forth in this Interim Order and the DIP Credit Agreement 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 this Interim Order or the DIP Credit Agreement. The rights and remedies of the DIP Agent and the DIP Lenders specified herein are cumulative and not exclusive of any rights or remedies that the DIP Agent and the DIP Lenders may have under the DIP Credit Documents or otherwise. Borrower shall cooperate fully with the DIP Agent and the DIP Lenders in their exercise of rights and remedies, whether against the DIP Collateral or otherwise.

33. Limitations on Borrowings. In further consideration for the DIP Lenders' agreement to provide the DIP Credit Facility, and the Prepetition Lenders' consent to the use of Cash Collateral, the Debtors, on behalf of themselves and their respective estates, agree that

neither the Debtors nor any party acting on their behalf (including any Committee) may seek authorization for the Debtors to borrow money from any person other than the DIP Lenders to the extent that the repayment of such borrowings is to be secured pursuant to section 364(d)(1) of the Bankruptcy Code by a lien or security interest that is senior or equal to the liens and security interests held by the Prepetition Agent (for the ratable benefit of the Prepetition Lenders), including the Prepetition Lender Replacement Liens, or by the DIP Agent, unless the Debtors provide for the immediate indefeasible payment in full in cash of the DIP Obligations, the Surviving A/R Obligations and the Prepetition Agreement Expenses at closing in connection with such borrowings.

34. Debtors' Stipulations. Each of the Debtors on behalf of itself and each of its successors and assigns, including a chapter 7 trustee, has stipulated and is hereby deemed:

(a) to release and discharge the DIP Agent, DIP Lenders, Prepetition Agent and Prepetition Lenders, in their respective capacities as such, together with their respective agents, attorneys, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Bankruptcy Code or other applicable law) arising out of, based upon or related to the Post-Petition Indebtedness, the DIP Collateral, the Prepetition Indebtedness, or the Prepetition Collateral; (b) to release and discharge the Securitization Provider and Vertis Receivables, together with their respective agents, attorneys, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Bankruptcy Code or other applicable law) arising out of, based upon or in any way related to the A/R Securitization Facility, the Securitization Collateral, the Surviving A/R Obligations or the A/R Purchase; and (c) to waive any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, amount and nonavoidability

(under the Bankruptcy Code or otherwise) of the Post-Petition Indebtedness, Prepetition Indebtedness, Surviving A/R Obligations and the security interests in and liens upon the DIP Collateral, the Securitization Collateral and the Prepetition Collateral. The releases and waivers set forth in this paragraph and in any other paragraph of this Interim Order are deemed effective upon the date of entry of this Interim Order, but are expressly without prejudice to the rights of any Committee or any other party with standing to challenge the validity of the liens and claims asserted by the Prepetition Lenders, or otherwise seek to prosecute claims held by the Debtors' estates against the Prepetition Lenders, in accordance with and subject to the provisions of Paragraph 36.

35. Modifications of DIP Credit Agreement and Budgets. The Debtors are hereby authorized, without further order of this Court to enter into agreements with the DIP Agent providing for any non-material modifications to the Budget or the DIP Credit Agreement, or of any other modifications to the DIP Credit Agreement necessary to conform the DIP Credit Agreement to this Interim Order; provided, however, that notice of any material modification or amendment to the Budget or the DIP Credit Agreement shall be provided to counsel to any Committee and counsel to the U.S. Trustee, each of whom shall have five (5) days from the date of such notice within which to object in writing to such modification or amendment. If any Committee or the U.S. Trustee timely objects to any material modification or amendment to the Budget or the DIP Credit Agreement, such modification or amendment shall only be permitted pursuant to an order of this Court.

36. Stipulations Regarding Prepetition Obligations and Prepetition Liens Binding on Parties in Interest. The stipulations and admissions contained in this Interim Order, including, without limitation, in recital Paragraphs E(1) through E(9) of this Interim Order, shall be binding on all parties in interest, including, without limitation, any Committee, unless, and

solely to the extent that, (a) any Committee, or another party in interest with standing and requisite authority, has timely commenced an appropriate contested matter or adversary proceeding (subject to the limitations set forth in Paragraph 20 hereof) (a "Challenge") challenging the amount, validity, or enforceability of the Prepetition Obligations, or the perfection or priority of the Prepetition Liens, or otherwise asserting any claims or causes of action on behalf of the Debtors' estates against the Prepetition Agent or the Prepetition Lenders relating to the Prepetition Obligations no later than the earlier of (X) seventy five (75) days after commencement of the Vertis Debtors' Reorganization Cases, or (Y) August 19, 2008 (*i.e.*, the deadline established by the Bankruptcy Court (as it may be extended by the Bankruptcy Court) for the filing of objections to the confirmation of the Joint Prepackaged Plan of Reorganization Under Chapter 11 of the Bankruptcy Code of Vertis Holdings, Inc., *et al.* proposed by Vertis Holdings, Inc., *et al.* and ACG Holdings, Inc., *et al.* (the "Vertis Prepackaged Plan") in substantially the form solicited pursuant to the Disclosure Statement relating to the Joint Prepackaged Plan of Reorganization of Vertis Holdings, Inc. *et al.* under Chapter 11 of the Bankruptcy Code and the Joint Prepackaged Plan of Reorganization of ACG Holdings, Inc.), and (b) the Court rules in favor of the plaintiff in any such timely and properly filed Challenge. If no such Challenge is timely commenced as of such date then, without further order of the Court, (i) the claims, liens and security interests of the Prepetition Agent and the Prepetition Lenders shall, without further order of the Court, be deemed to be finally allowed for all purposes in the Vertis Debtors' Reorganization Cases and any subsequent chapter 7 cases and shall not be subject to challenge by any party in interest as to validity, priority or otherwise, and (ii) without further order of the Court, the Debtors and their estates shall be deemed to have released any and all claims or causes of action against the Prepetition Agent and the Prepetition Lenders with respect to the Prepetition Credit Documents or any related transactions. Notwithstanding anything to the

contrary herein, if any such Challenge is timely commenced, the stipulations contained in Paragraphs E(1) through E(9) hereof shall nonetheless remain binding on all parties in interest and preclusive (as provided in the second sentence of this Paragraph 36) except to the extent that such stipulations are expressly and successfully challenged in such Challenge.

37. Releases Relating to A/R Securitization Facility, Surviving A/R

Obligations, A/R Purchase and A/R Obligations Prepetition Liens Binding on Parties in Interest.

The Debtors' (a) release and discharge of the Securitization Provider and Vertis Receivables, together with their respective agents, attorneys, employees, heirs, executors, administrators, officers, directors, successors and assigns, from any and all claims, causes of action and remedies (whether under the Bankruptcy Code or other applicable law) arising out of, based upon or in any way related to the A/R Securitization Facility, the Securitization Collateral, the Surviving A/R Obligations or the A/R Purchase, and (b) waiver of any and all defenses (including, without limitation, offsets and counterclaims of any nature or kind) as to the validity, perfection, priority, enforceability, amount and nonavoidability (under the Bankruptcy Code or otherwise) of the Surviving A/R Obligations and the A/R Obligations Prepetition Liens, as set forth in Paragraph 34 of this Interim Order, shall be binding upon all parties in interest, including, without limitation, the Committee, unless, and solely to the extent that, (x) any Committee, or another party in interest with standing and requisite authority, has timely commenced an appropriate contested matter or adversary proceeding (subject to the limitations set forth in Paragraph 20 hereof) (a "Securitization Challenge") challenging the amount, validity, or enforceability of the Surviving A/R Obligations or the perfection or priority of the A/R Obligations Prepetition Liens, or otherwise asserting any claims or causes of action on behalf of the Debtors' estates against the Securitization Provider or Vertis Receivables arising out of, based upon or in any way related to the A/R Securitization Facility, the Securitization Collateral, the Surviving A/R Obligations or

the A/R Purchase no later than the earlier of (X) seventy five (75) days after commencement of the Vertis Debtors' Reorganization Cases, or (Y) August 19, 2008 (*i.e.*, the deadline established by the Bankruptcy Court (as it may be extended by the Bankruptcy Court) for the filing of objections to the Vertis Prepackaged Plan), and (b) the Court rules in favor of the plaintiff in any such timely and properly filed Securitization Challenge. If no such Securitization Challenge is timely commenced as of such date then, without further order of the Court, (i) the claims, liens and security interests of the Securitization Provider shall, without further order of the Court, be deemed to be finally allowed for all purposes in the Vertis Debtors' Reorganization Cases and any subsequent chapter 7 cases and shall not be subject to challenge by any party in interest as to validity, priority or otherwise, and (ii) without further order of the Court, the Debtors and their estates shall be deemed to have released any and all claims or causes of action against the Securitization Provider and Vertis Receivables with respect to the A/R Securitization Facility, the Securitization Collateral, the Surviving A/R Obligations or the A/R Purchase.

Notwithstanding anything to the contrary herein, if any such Securitization Challenge is timely commenced, the releases and waivers contained in this Paragraph 37 shall nonetheless remain binding upon all parties in interest and preclusive (as provided in the second sentence of this Paragraph 37) except to the extent that such releases and waivers are expressly and successfully challenged in such Securitization Challenge.

38. Termination of Commitments. The commitment of the DIP Lenders shall terminate and all amounts owing under the DIP Credit Facility shall be due and payable (and, as to letters of credit then outstanding, the Debtors shall be obligated to deposit with the DIP Agent cash in an amount equal to 105% of the face amount of such letters of credit), on the earliest to occur of the following (the "Termination Date"): (1) the date that is ninety (90) days after the filing of the Vertis Debtors' Reorganization Cases, (2) the effective date of a plan confirmed in

the Vertis Debtors' Reorganization Cases, (3) the Borrower's receipt of written notice (which notice may be delivered by facsimile or other electronic transmission and may be delivered to the chief financial officer of the Borrower) of the occurrence of an Event of Default hereunder or under the definitive DIP Credit Facility documents and a determination by the DIP Agent or Requisite DIP Lenders to terminate the commitments and to terminate the DIP Lenders' consent to the Borrower's and Guarantors' use of Cash Collateral (such notice, a "Carve-Out Trigger Notice") and (4) the payment in full in cash of all obligations under the DIP Credit Facility and the A/R Securitization Facility (other than the Surviving A/R Obligations) and the payment in full in cash (or, as applicable cash collateralization at 102%) of all Prepetition Agent/Revolver Obligations.

39. Master Proof of Claim. The Prepetition Agent shall be authorized (but not required) to file a master proof of claim against the Debtors (the "Master Proof of Claim") on behalf of itself and the Prepetition Lenders on account of their prepetition claims arising under the Prepetition Credit Documents, and the Prepetition Agent shall not be required to file a verified statement pursuant to Bankruptcy Rule 2019. If the Prepetition Agent so files a Master Proof of Claim against the Debtors, the Prepetition Agent and each Prepetition Lender, and each of their respective successors and assigns, shall be deemed to have filed a proof of claim in the amount set forth opposite its name therein in respect of its claims against the Debtors arising under the Prepetition Credit Documents, and the claims of the Prepetition Agent and each Prepetition Lender (and their respective successors and assigns) named in the Master Proof of Claim shall be allowed or disallowed as if such entity had filed a separate proof of claim in each Chapter 11 Case or any successor cases in the amount set forth opposite each name listed in the Master Proof of Claim. The Prepetition Agent shall further be authorized to amend its respective Master Proof of Claim from time to time to, among other things, reflect a change in the holders

of the claims set forth therein or a reallocation among such holders of the claims asserted therein resulting from any transfer of such claims. The provisions set forth in this Paragraph 39 and any Master Proof of Claim filed pursuant to the terms hereof are intended solely for the purpose of administrative convenience and shall not affect the substantive rights of any party in interest or their respective successors in interest, including, without limitation, the rights of the Prepetition Agent and each Prepetition Lender as the holder of a claim against the Debtors under applicable law, and the numerosity requirements set forth in section 1126 of the Bankruptcy Code.

40. Final Hearing. The Final Hearing is scheduled for August 13, 2008 at 10:00 a.m. (prevailing Eastern Time) before this Court. Any objections by creditors or other parties in interest to any provisions of this Interim Order shall be deemed waived unless timely filed and served in accordance with this Paragraph 40. The Debtors shall promptly serve a notice of entry of this Interim Order and the Final Hearing, together with a copy of this Interim Order, by first class mail, postage prepaid, facsimile, electronic mail or overnight mail upon the Notice Parties. In addition, the Debtors shall promptly serve a notice of the lien on avoidance actions and the 506(c) waiver contained herein on all parties in interest other than the Notice Parties by first class mail, postage prepaid, facsimile or electronic mail. The notice of the entry of this Interim Order and the Final Hearing and the notice of the 506(c) waiver shall state that objections to the entry of the Final Order shall be filed with the United States Bankruptcy Court for the District of Delaware by no later than 5:00 p.m. (prevailing Eastern Time) on August 6, 2008 (the "Objection Deadline").

41. Reservations by 9 3/4% Indenture Trustee and Vertis Second Lien  
Noteholders. The 9 3/4% Indenture Trustee and <sup>certain</sup> the Vertis Second Lien Noteholders <sup>reserve their</sup> ~~have asserted~~ <sup>rights to</sup> ~~that they may~~ object to entry of the Final Order if they are not provided treatment thereunder with respect to a challenge period regarding the extent, priority and validity of their respective



liens and/or claims and representations of the Debtors thereto. All parties in interest, including the Debtors, reserve all of their rights with respect thereto.

Dated: July 16, 2008.

  
UNITED STATES BANKRUPTCY JUDGE

1 UNITED STATES BANKRUPTCY COURT

2 DISTRICT OF DELAWARE

3 Case No. 12-12821 (CSS)

4 - - - - - x

5 In the Matter of:

6

7 VERTIS HOLDINGS, INC., et al,

8

9 Debtors.

10

11 - - - - - x

12

13 United States Bankruptcy Court

14 824 North Market Street

15 Wilmington, Delaware

16

17 October 12, 2012

18 1:40 PM

19

20

21 B E F O R E :

22 HON CHRISTOPHER S. SONTCHI

23 U.S. BANKRUPTCY JUDGE

24

25 ECR OPERATOR: LESLIE MURIN

1           Mr. Hede would testify that the DIP lenders have  
2           agreed to provide DIP financing on a super priority claim  
3           and first priority priming lien basis consisting of a \$150  
4           million revolving loan facility. Mr. Hede would further  
5           testify that the proposed DIP facility provides the debtors  
6           with liquidity sufficient to finance these Chapter 11 cases,  
7           and consummate the sale to Quad as outlined in the DIP  
8           motion and the other first day papers.

9           Mr. Hede would testify that given current market  
10          conditions and the debtor's urgent need for liquidity, the  
11          terms of the DIP facility, which is premised upon a  
12          consensual or priming of the interests of the prepetition  
13          secured parties were negotiated intensely at arm's length  
14          and in good faith, are fair and reasonable, and the best  
15          alternative under the circumstances.

16          Mr. Hede believes that the proposed DIP facility  
17          is in the best interest of the debtors, their estates and  
18          creditors and all other parties in interest, as the debtor's  
19          ability to access the additional liquidity and other  
20          financial accommodations provided under the DIP facility is  
21          vital to the expeditious pursuit and implementation of the  
22          363 process.

23          Mr. Hede would also testify that the roll-up of  
24          the prepetition revolving credit obligations does not  
25          prejudice any other parties in interest. As evidenced by

1 the purchase price contemplated to be paid under the Quad  
2 stalking horse agreement, the revolving lenders are over  
3 secured. Additionally, the roll-up is an important  
4 component of the revolving lender's adequate protection  
5 package to compensate the lenders for the additional credit  
6 risk they assumed through reductions of the minimum  
7 availability covenants under the prepetition revolving  
8 credit facility over the course of the last several months.

9 Mr. Hede would testify that the DIP lenders are  
10 the only viable sources of DIP financing for the debtors and  
11 the proposed terms of the DIP facility including the roll-up  
12 of the prepetition credit obligations are the only terms  
13 under which the DIP lenders are willing to lend.

14 Thus, absent approval of the proposed DIP  
15 facility, the debtors would have no ability to effectuate  
16 the sale to Quad and finance these cases.

17 THE COURT: Anyone wish to cross-examine the  
18 witness? I may have questions, but we'll see if they arise.

19 MR. SMITH: Very well, Your Honor, thank you.

20 Your Honor, with respect to the debtor's  
21 presentation in support of the DIP motion, we believe that  
22 the motion papers, the content of Mr. Hede's proffer justify  
23 in light of our need to move ahead with the 363 process and  
24 administer these cases, the Court's approval of the DIP  
25 facility. Of course, I'm happy to answer any questions that

1 the Court has. Also, with respect to the comments of the  
2 U.S. Trustee, I would defer the podium to them so that they  
3 may address the Court.

4 THE COURT: Let me ask you some questions. And I  
5 did my best to wade through the order, the motion, and a lot  
6 of defined terms which make it difficult sometimes. So I'm  
7 going to ask you very specifically.

8 The roll-up, you are paying the prepetition  
9 revolver lenders --

10 MR. SMITH: Correct.

11 THE COURT: -- 100 percent?

12 MR. SMITH: Correct, Your Honor.

13 THE COURT: Are the lenders, i.e., the DIP lenders  
14 the same entity/persons as the revolver lenders?

15 MR. SMITH: We understand that they are, You  
16 Honor.

17 THE COURT: The -- what are you doing with the  
18 balance, it's about 68 million to the revolver lenders?

19 MR. SMITH: Your Honor, the balance was 68 million  
20 as of September 30th. The balance is higher now. Counsel  
21 for the DIP lender can confirm the numbers. I believe the  
22 balance is closer to 85 million, 86 million.

23 THE COURT: And the rest of the cash is used in  
24 the budget?

25 MR. SMITH: And in addition, Your Honor, there's

1 letters of credit --

2 THE COURT: Uh-huh.

3 MR. SMITH: -- being backed and when you factor  
4 that in, it goes -- it increases to nearly 100 million,  
5 which would be for the revolver lenders.

6 THE COURT: All right. Now, who --

7 MR. SMITH: Those are rough numbers, Your Honor.  
8 I would defer to Mr. Swett to specify the figures.

9 MR. SWETT: I'd be happy to, Your Honor, if you  
10 would like to take that information at this point.

11 THE COURT: Sure. Just generally speaking would  
12 be helpful, thank you.

13 MR. SWETT: Thank you, Your Honor. Again for the  
14 record, Brian Swett on behalf of General Electrical Capital  
15 Corporation which is the proposed DIP agent and the existing  
16 prepetition ABL agent.

17 The current outstanding balance of revolving  
18 advances under our prepetition facility is approximately  
19 \$88.3 million. There are approximately 15.56 letters of  
20 credit issued under that facility, and are accrued but  
21 unpaid interest with respect to the prepetition facility is  
22 just short of \$200,000.

23 Our DIP facility and the form of order presented  
24 to the Court for its approval and consideration contemplate  
25 that all of the letters of credit currently issued under the

1     prepetition facility would be deemed issued under the post  
2     petition facility, so that would not affect any cash event  
3     with respect to the roll-up. Those LCs would remain  
4     outstanding, and we would not require that they be cash  
5     collateralized at this point, although of course, the  
6     issuance and existence of those LCs impacts availability  
7     under the prepetition facility and would impact similarly,  
8     in fact, in exactly the same way availability under the post  
9     petition facility.

10           So the amount of the roll-up would be the sum of  
11     \$88 million and the accrued but unpaid interest, any fees,  
12     costs, and expenses plus the DIP fees. And so with respect  
13     to the prepetition portion it would be a little bit south of  
14     \$89 million pending the further accrual of interest.

15           THE COURT: Okay. Thank you.

16           Now, the priming lien is on what assets of the  
17     debtor? Everything?

18           MR. SWETT: Your Honor, it's contemplated that the  
19     priming lien would prime two sets of liens under the  
20     prepetition facilities. They would prime the existing ABL  
21     liens, on the ABL priority collateral.

22           THE COURT: Uh-huh.

23           MR. SWETT: And that they would prime the existing  
24     term lender liens on the ABL collateral. We would not prime  
25     the term liens on the term collateral, and we would not

1 prime the ABL liens on the term collateral.

2 THE COURT: Okay.

3 MR. SWETT: So as a contractual matter, we have  
4 the consent of the term lenders to prime their interests on  
5 our priority collateral, but not to prime their interests on  
6 their priority collateral. So we're maintaining as a  
7 contractual matter, the prepetition structure with respect  
8 to the priority of liens.

9 THE COURT: Okay.

10 MR. SWETT: In turn, to the extent that there are  
11 other liens, either on our priority collateral or their  
12 priority collateral, we are not seeking to prime those  
13 liens. So the only liens we're seeking to prime are our own  
14 with our consent, and the term lenders with their consent,  
15 and as a matter of contract.

16 The Court has before it an order that has very  
17 intense, very dense descriptions of those priorities and the  
18 way that those priorities work. I was mindful of the  
19 Court's concerns when these parties were before the Court in  
20 the first Vertis case, and very mindful, very specifically  
21 of the Court's direction that it would not allow a rolling  
22 up lender to simply insert or interject its rolled up liens  
23 at the same level of priority that its prepetition liens may  
24 have had.

25 In other words, the Court would not allow us to



1 prime parties not before the Court --

2 THE COURT: Correct.

3 MR. SWETT: -- even if we previously primed them.

4 So this order and this structure takes that instruction into  
5 account, and I'm afraid I have to apologize to the Court for  
6 the density of that drafting and that provision, but frankly  
7 it is to reflect that concern and the Court's identification  
8 and explanation of that concern the last time that these  
9 parties were before the Court.

10 THE COURT: All right. That is extremely helpful.

11 MR. SWETT: Thank you, Your Honor.

12 THE COURT: And I -- and as long as we understand  
13 that the language that's in the order reflects what you just  
14 told me in court, that could save me a lot of trouble.

15 MR. SWETT: It does.

16 THE COURT: Okay.

17 MR. SWETT: A number of people in the last few  
18 weeks have told me that I'm the only person who understands  
19 it. That may be the case, but I mean what I say, and I mean  
20 what I write, and we're not seeking to prime anybody whose  
21 consent we do not have.

22 THE COURT: Sound like the vice-president right  
23 there. Except you're not -- oh, there's a smile, there you  
24 go.

25 MR. SWETT: Thank you, Your Honor.

1 THE COURT: All right. What was the other issue,  
2 Mr. Schepacarter, I know you had -- there was an open issue  
3 on the priming. There was something else, too. Oh, the  
4 investigation period. What is this three days prior to the  
5 sale hearing non --

6 MR. SCHEPACARTER: Did Your Honor want to hear  
7 from us or did you want to hear from counsel?

8 THE COURT: You can go ahead, Mr. Schepacarter.

9 MR. SCHEPACARTER: Thank you, Your Honor. For  
10 the record Richard Schepacarter for the United States  
11 Trustee.

12 The one issue we had, we had two issues, I think  
13 Your Honor has stressed the roll-up issue. With respect to  
14 the three days before issue, the standard practice has  
15 always been the 60 days from the date of the formation of  
16 the unsecured creditor's committee, which in this case will  
17 take place, the meeting will take place on the 19th of  
18 October, so that's a week from today, or the 75 days from  
19 the date of the petition date, which I've sort of calculated  
20 both days. 60 days would be, I believe, December 19th, and  
21 the 75 days would be, what I believe falls on Christmas, of  
22 all days, on December 25th.

23 I'm not sure exactly why the three days is  
24 inserted. I -- the lenders can probably give Your Honor  
25 more elucidation on that, but it doesn't seem to be

1 appropriate in this case, given the fact that the committee  
2 has yet to be formed. That the committee will have, if  
3 those -- if that date is taken into effect, that three days  
4 before the date that it's set, falls somewhere short of the  
5 60 days.

6 From reading the papers, it looked like it gave  
7 the committee only like 48 days. I heard the number today  
8 65 days, so maybe it's a few extra days. But it's a date  
9 that doesn't seem to be one easily negotiated by the  
10 committee. So once it's said, it's sort of set in stone.

11 If the hearing, or if the sale, for whatever  
12 reason, is extended out it's still -- it's the date that  
13 it's first set. So that date is sort of carved into stone  
14 and doesn't give the parties, especially the committee,  
15 which isn't in front of Your Honor today and has no voice to  
16 be heard, no ability to change that date.

17 So we would request that that part -- that  
18 portion, the Z portion of the order be taken out, and that  
19 the mere 60 days and the 75 days be allowed to go forward in  
20 that order.

21 THE COURT: Right.

22 MR. SCHEPACARTER: We've (indiscernible) some of  
23 the other language, some of the what I call the jumping  
24 through the hoops or, you know, 15 angels dancing on the  
25 head of a pin type language, so that it makes it a little

1 bit clearer with respect to the order that some of those  
2 things don't need to be taken care of, such as an  
3 appropriate motion and all of that.

4 THE COURT: Uh-huh.

5 MR. SCHEPACARTER: So we would sort of stick with  
6 the -- would like to stick with the 60 and 75 days,  
7 especially with all of the protections that the lender is  
8 getting under the order otherwise.

9 THE COURT: All right. Thank you. Let me hear a  
10 response on the three days.

11 MR. SWETT: Thank you, Your Honor, Brian Swett for  
12 GECC.

13 The premise of this case from our perspective is  
14 several fold, further to Mr. Hede's testimony. Our  
15 expectation is that we will be paid in full given the value  
16 of our collateral upon the consummation of the sale. And,  
17 in fact, I'm sure Your Honor hasn't had time to refer to the  
18 sale papers, but there is a negotiated and quite hotly  
19 negotiated provision in the sale order that provides that  
20 the ABL lenders would get paid in full, as of the  
21 consummation of the sale, I think again in recognition by  
22 all of the parties of the fully secured nature of our  
23 prepetition position, and then in turn what we hope to be  
24 and what we've asked to be our rolled up position.

25 And so this is really only from our perspective a

1 timing issue, in that once the sale is before the Court and  
2 once the sale is consummated, our expectation is to be paid.  
3 And to the extent that there's a challenge to that  
4 conclusion, based on our liens or claims we'd like to know  
5 what it is as of the time that the sale is before the Court  
6 for approval.

7 We think we have a very straight forward  
8 prepetition structure for ABL lenders. We have some  
9 additional collateral, the Court saw referenced in the  
10 papers, and I'm happy to explain that if the Court would  
11 like. But basically we lend on inventory and receivables,  
12 we also have spare parts, and accounts and cash, but in any  
13 event, a very straight forward security agreement structure  
14 and perfection structure.

15 We're, of course, prepared to provide to the  
16 committee immediately upon its formation and retention of  
17 professionals documents that evidence the conveyance to us  
18 of our liens and our perfection of those liens. We can do  
19 so through providing our lien search results from our most  
20 recent lien search so the committee would not be delayed in  
21 terms of ordering those results or looking through them.  
22 And we'll, of course, provide a comprehensive set of our  
23 loan documents including our blocked account agreements, so  
24 the committee's path will be eased toward what we think is  
25 an inevitable conclusion, at least that we're fully

1 perfected.

2 We make that commitment to the Court in support of  
3 our requests that the committee's investigation period with  
4 respect to our liens only expire before the sale hearing,  
5 given our expectations with respect to value and the  
6 agreement among the parties that we'd be paid in full.

7 I'm happy to address any questions that the Court  
8 has.

9 THE COURT: Well, (indiscernible) response. It's  
10 been requested of me previously to shorten investigation  
11 periods. The only way it's been done in the context of a  
12 sale where the secured lender is credit bidding and needs to  
13 know whether it has liens of a certain value that it can  
14 actually credit bid. So you can have a situation where  
15 there's a credit bid and then it goes through the sale, and  
16 then ultimately perhaps it's challenged and it creates all  
17 sorts of issues and problems.

18 In those contexts, I did approve it once or twice  
19 and I stopped approving it almost immediately because the  
20 exception was clearly going to swallow the rule. And it was  
21 I think putting too much pressure on the committee and  
22 putting the committee in such a disadvantage when it comes  
23 to the ability to negotiate that it was troubling. This is  
24 a little bit different. It's not, you know, seeking two  
25 credit bids. As a matter of fact, I think you've agreed not

1 to credit bid if I remember correctly.

2 MR. SWETT: We've agreed not to credit bid as long  
3 as the Quad agreement doesn't terminate, and as long as it's  
4 not modified in a manner material adverse -- materially  
5 adverse to our interests. Excuse me.

6 THE COURT: All right. That's fine.

7 So basically what you're really asking for is an  
8 acceleration so that when you get the money you can spend  
9 it?

10 MR. SWETT: Or at least keep it, yes, Your Honor.

11 THE COURT: Yeah.

12 MR. SWETT: But even more precisely given the  
13 business we're in, hopefully find someone else to whom we  
14 can lend the money.

15 THE COURT: Oh, there is that. Okay. You have  
16 your agents -- I mean your -- whatever.

17 Now, it's a delegation of the entire process and  
18 point of the investigation periods that the minimum  
19 investigation period that I'll approve is the rule set out  
20 in the local rules. I don't see any instance in this case,  
21 unless the committee comes in and tells me they have, you  
22 know, XYZ, a problem, et cetera, why I would have to go out  
23 beyond the 60, 75 day rule, but I'm not going to shorten it.  
24 And (indiscernible) agree to that, but that's the ruling.

25 MR. SWETT: It's a point to which Your Honor

1 correctly indicates that we can't agree, and we do not have  
2 the authority of our clients to provide the financing on  
3 that basis, we'd have to consult with them to understand  
4 their position in light of the Court's ruling with respect  
5 to that aspect of the financing.

6 THE COURT: I understand, but that's my ruling.

7 MR. SWETT: Thank you, Your Honor.

8 THE COURT: In connection with the priming, I will  
9 approve it because it is what it's been described to me as  
10 being which is a self-priming/consensual priming and that  
11 their other liens, whether they exist pre or post, whatever  
12 liens other than that that might exist aren't being primed.  
13 Of course, all the defenses, et cetera, that the lender  
14 would have to those liens or the debtor would have to those  
15 liens are fully preserved. I'm not trying to deal with that  
16 today. But because it's a consensual/self-priming, I am  
17 prepared to approve it even though it's the first day of the  
18 case.

19 MR. SMITH: Thank you, Your Honor.

20 THE COURT: There's a gentleman that wishes to be  
21 heard, and I guess then we can maybe turn the pages of the  
22 order.

23 MR. SMITH: That sounds -- sure, Your Honor.

24 MR. UZZI: Your Honor, Gerard Uzzi of Milbank  
25 Tweed on behalf of Morgan Stanley, the admin agent for the



**EXHIBIT E**

**DIP Intercreditor Agreement**

## INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (this "Agreement") is dated as of \_\_\_\_\_, 2013, and entered into by and between **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, in its capacity as agent under the ABL Documents, including its successors and assigns in such capacity from time to time ("**ABL Agent**"), and **BAYSIDE FINANCE, LLC**, a Delaware limited liability company, in its capacity as agent under the Term Loan Documents, including its successors and assigns in such capacity from time to time ("**Term Loan Agent**").

### RECITALS

School Specialty, Inc., a Wisconsin corporation, each of ClassroomDirect.com, LLC, a Delaware limited liability company, Delta Education, LLC, a Delaware limited liability company, Sportime, LLC, a Delaware limited liability company, Childcraft Education Corp., a New York corporation, Bird-in-Hand Woodworks, Inc. a New Jersey corporation, Califone International, Inc. a Delaware corporation, and Premier Agendas, Inc., a Washington corporation (individually, a "**Borrower**" and collectively, "**Borrowers**"), Frey Scientific, Inc., a Delaware corporation, Sax Arts & Crafts, Inc., a Delaware corporation and Select Agendas, Corp., a Nova Scotia unlimited liability company (such Subsidiaries, together with such other Subsidiaries that become guarantors under the ABL DIP Credit Agreement and the Term Loan DIP Credit Agreement, the "**Guarantors**"), the lenders party thereto, and ABL Agent, have entered into that certain Debtor-in-Possession Credit Agreement dated as of the date hereof (the "**ABL DIP Credit Agreement**") providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to Borrowers. The obligation of Borrowers to repay the ABL Debt under the ABL DIP Credit Agreement is guaranteed by the Guarantors;

Borrowers, the Guarantors, the lenders party thereto, and Term Loan Agent, have entered into that certain Senior Secured Super Priority Debtor-in-Possession Credit Agreement dated as of the date hereof (the "**Term Loan DIP Credit Agreement**") pursuant to which such lenders have agreed to make term loans and revolving loans to Borrowers. The obligation of Borrowers to repay the Term Loan Debt under the Term Loan DIP Credit Agreement is guaranteed by the Guarantors;

On January 28, 2013 (the "Filing Date"), Borrowers and certain Guarantors filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**");

Borrowers are continuing to operate their businesses and manage their properties as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code;

The obligations of Borrowers and the Guarantors under the ABL Documents are to be secured (a) on a first priority basis by Liens on the ABL Priority Collateral, and (b) on a second priority basis by Liens on the Term Loan Priority Collateral;

The obligations of Borrowers and the Guarantors under the Term Loan Documents are to be secured (a) on a first priority basis by Liens on the Term Loan Priority Collateral, and (b) on a second priority basis by Liens on the ABL Priority Collateral; and

ABL Agent, for itself and on behalf of the ABL Claimholders, and Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, desire to enter into this Agreement to (a) confirm the relative priority of their respective Liens on the assets of Borrowers and the Guarantors, (b) provide for the application, in accordance with such priorities, of proceeds of such Collateral, and (c) address certain other matters.

## **AGREEMENT**

In consideration of the foregoing, the mutual covenants and obligations herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### **SECTION 1. Definitions; Rules of Construction.**

1.1 Defined Terms. Any terms (whether capitalized or lower case) used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern. As used in the Agreement, the following terms shall have the following meanings:

"**ABL Agent**" has the meaning set forth in the preamble to this Agreement.

"**ABL Cap**" means, as of any date of determination, the result of:

the sum of (which amount shall be increased by the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the ABL Debt (other than Excess ABL Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the ABL Debt and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding, whether or not such amounts are allowed or allowable, in whole or in part, in any such Insolvency Proceeding):

(a) an amount equal to the lesser of \$192,500,000 (minus the principal amount of Prepetition ABL Debt) and the sum of: (A) 120% of the Stated Borrowing Base (the "**Borrowing Base Formula**") at the time of determination (minus the principal amount of the Prepetition ABL Debt), plus (B) the amount of outstanding principal obligations in excess of clause (A) that were not knowingly made or incurred in excess of the Borrowing Base Formula when made or incurred ("**Unintentional Overformula Advances**"), plus (C) if at the time of determination an Unintentional Overformula Advance exists, the greater of (1) \$5,000,000 and (2) an amount equal to 10% of the sum of the principal amount of the Prepetition ABL Debt and the ABL Debt immediately prior to the incurrence of ABL Debt in excess of amounts thereof permitted to be incurred under clauses (A) and (B) above (provided that availability under this clause (C)(2) shall refresh each time no ABL Debt exists in excess of the aggregate amount set forth in clauses

(A) and (B) above), plus (D) the amount of the Bank Product Obligations under the ABL DIP Credit Agreement, plus (E) amounts paid for taxes, insurance and other similar protective advances made to preserve and protect the value of the ABL Priority Collateral, minus

(b) the amount of all payments of revolving loan obligations under the ABL DIP Credit Agreement that result in a permanent reduction of the revolving credit commitments under the ABL DIP Credit Agreement (other than payments of such revolving loan obligations in connection with a Refinancing thereof).

Any net increase in the aggregate principal amount of a loan, advance or Letter of Credit (on a U.S. Currency Equivalent basis) after the loan or advance is made or the Letter of Credit issued that is caused by a fluctuation in the exchange rate of the currency in which the loan, advance or Letter of Credit is denominated will be ignored in determining whether the ABL Cap has been exceeded.

**"ABL Cash Collateral"** has the meaning set forth in Section 6.2(a).

**"ABL Claimholders"** means, as of any date of determination, the holders of the ABL Debt at that time, including (a) ABL Agent, (b) the Co-Collateral Agents (as defined in the ABL DIP Credit Agreement), (c) the ABL Lenders, and (d) the Bank Product Providers.

**"ABL Collateral"** means the assets of each and every Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any ABL Debt, including all proceeds and products thereof.

**"ABL Collateral Documents"** means the ABL Security Agreement, the ABL Mortgages (if any), the Financing Orders, and any other agreement, document, or instrument pursuant to which a Lien is granted (or purported to be granted) securing any ABL Debt or under which rights or remedies with respect to such Liens are governed.

**"ABL DIP Credit Agreement"** has the meaning set forth in the recitals to this Agreement.

**"ABL Debt"** means all Obligations (as that term is defined in the ABL DIP Credit Agreement) and all other amounts owing, due, or secured under the terms of the ABL DIP Credit Agreement or any other ABL Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, reasonable attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, Letters of Credit, Bank Product Obligations, obligations to provide cash collateral in respect of Letters of Credit or Bank Product Obligations or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts, in each case above payable under or secured by any ABL Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the ABL Documents but for the effect of the Insolvency Proceeding, except with respect to a Grantor any such amounts that are not allowed in any Insolvency Proceeding of such Grantor), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, including any ABL DIP Financing provided by any of the ABL Claimholders under the ABL Documents. For purposes of this

Agreement, ABL Debt shall not include any Prepetition ABL Debt except to the extent such ABL Debt is Refinanced by or deemed issued or incurred under the ABL DIP Credit Agreement.

**"ABL Default"** means any "Event of Default", as such term is defined in any ABL Document.

**"ABL Default Disposition"** has the meaning set forth in Section 5.1(g).

**"ABL DIP Financing"** has the meaning set forth in Section 6.2(a).

**"ABL DIP Financing Conditions"** means (a) that (i) Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement) retains its Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (ii) as to the Term Loan Priority Collateral that existed as of the date of the commencement of such Insolvency Proceeding (including proceeds thereof arising after such commencement of the Insolvency Proceeding), Term Loan Agent's (as defined hereunder and under the Existing Intercreditor Agreement) Liens with respect to such Collateral remain senior and prior to the Liens (inclusive of any Liens securing the ABL DIP Financing) of ABL Agent (as defined hereunder and under the Existing Intercreditor Agreement) (or of the agent and lenders with respect to the ABL DIP Financing) with respect to such Collateral, and (iii) as to Term Loan Priority Collateral acquired by the applicable Grantor after the commencement of such Insolvency Proceeding (excluding proceeds of Term Loan Priority Collateral existing prior to the commencement of applicable Insolvency Proceeding), either (A) neither the ABL Claimholders (nor the agent and lenders with respect to the ABL DIP Financing) nor the Term Loan Claimholders obtain a Lien with respect to such Collateral, or (B) if a Lien with respect to such Collateral is granted to secure any obligations owing to the ABL Claimholders (as defined hereunder and under the Existing Intercreditor Agreement) under any ABL Documents (as defined hereunder and under the Existing Intercreditor Agreement) or any ABL DIP Financing, then Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement) obtains a Lien with respect to such Collateral and the Liens with respect to such Collateral securing obligations owing to the ABL Claimholders (as defined hereunder and under the Existing Intercreditor Agreement) under any ABL Documents (as defined hereunder and under the Existing Intercreditor Agreement) or any ABL DIP Financing are junior and subordinate to the Liens of Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement) with respect to such Collateral, (b) in the case of ABL DIP Financing, the maximum Outstanding ABL Principal Obligations permitted thereunder would not exceed the ABL Cap, (c) that the proposed ABL Cash Collateral use or ABL DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which any material portion of the material terms are set forth in the ABL Cash Collateral order or ABL DIP Financing documentation, as applicable, (d) that the proposed ABL Cash Collateral order or ABL DIP Financing documentation does not directly or indirectly require or compel the sale of all or substantially all of the Collateral other than pursuant to the exercise of remedies after default and acceleration of such ABL DIP Financing pursuant to such order or documentation, and (e) that the ABL DIP Financing is otherwise subject to, and in compliance with, the terms of this Agreement.

**"ABL Documents"** means the ABL Collateral Documents, the ABL DIP Credit Agreement, each of the other Loan Documents (as that term is defined in the ABL DIP Credit Agreement), and each of the documents executed in connection with any ABL DIP Financing provided by Agent and any ABL Claimholder unless such documents expressly provide at the time executed that they shall not constitute ABL Documents for purposes of this Agreement and that the debt incurred thereunder shall not constitute ABL Debt for purposes of this Agreement.

**"ABL Lenders"** means the "Lenders" as that term is defined in the ABL DIP Credit Agreement, or any analogous term having substantially the same meaning (including the Issuing Lender and the Swing Lender (as those terms are defined in the ABL DIP Credit Agreement)).

**"ABL Mortgages"** means each mortgage, deed of trust, and other document or instrument under which any Lien on real property or fixtures owned or leased by any Grantor is granted to secure any ABL Debt or under which rights or remedies with respect to any such Liens are governed.

**"ABL Priority Collateral"** means all of each and every Grantor's right, title, and interest in and to the following types of property of such Grantor, wherever located and whether now owned by such Grantor or hereafter acquired (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute ABL Priority Collateral):

(a) all Accounts (except to the extent that such Accounts constitute proceeds of Term Loan Priority Collateral);

(b) all inventory;

(c) all instruments, chattel paper (including all tangible and electronic chattel paper) and other contracts, in each case to the extent governing, evidencing, substituting for, arising from or constituting proceeds of any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral);

(d) all deposit accounts and securities accounts into which any proceeds of ABL Priority Collateral are deposited (including any cash and other funds or other property held in or on deposit therein, except to the extent that such deposit accounts or securities accounts contain identifiable proceeds of Term Loan Priority Collateral), but excluding in any event the Term Loan Priority Collateral Deposit Account;

(e) all contracts, documents of title, and other documents that evidence the ownership of, right to receive or possess, or that otherwise relate to, any ABL Priority Collateral, including contracts, documents of title, and other documents that relate to the acquisition of, or sale or other Disposition of, any inventory, and all contracts, documents of title, or other documents that arise from or constitute proceeds of ABL Priority Collateral;

(f) all guaranties, contracts of suretyship, insurance, letters of credit, letter-of-credit rights, security and other credit enhancements (including repurchase agreements), and supporting obligations, in each case in respect of the ABL Priority Collateral (except to the

extent that such Collateral constitutes proceeds of Term Loan Priority Collateral), including (i) rights of stoppage in transit, replevin, repossession, reclamation, and other rights and remedies of an unpaid vendor in respect of ABL Priority Collateral, and (ii) identifiable deposits by and property of account debtors or other persons securing the obligations of account debtors in respect of Accounts or other Receivables (except to the extent that such Accounts or other Receivables constitute proceeds of Term Loan Priority Collateral);

(g) all commercial tort claims and general intangibles (other than Intellectual Property) to the extent (i) arising from, relating to, or constituting identifiable proceeds of any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral), inventory or other ABL Priority Collateral, (ii) relating to or arising out of the manufacture, distribution, sale, or other Disposition of inventory, or (iii) relating to or arising out of the collection of, or realization upon, any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral);

(h) all cash and cash equivalents of any kind at any time deposited with or held by any ABL Claimholder that arise from or constitute proceeds of ABL Priority Collateral (except to the extent that such Collateral constitutes identifiable proceeds of Term Loan Priority Collateral);

(i) all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts, or commodity accounts) and all monies, credit balances, deposits, and other property of any Grantor now or hereafter held, or received by, or in transit to, an ABL Claimholder, any bank, securities intermediary, depository, or other institution from or for the account of any Grantor, whether for safekeeping, pledge, custody, transmission, collection, or otherwise, in each case, to the extent arising from or constituting proceeds of ABL Priority Collateral (except to the extent that such Collateral constitutes identifiable proceeds of Term Loan Priority Collateral);

(j) all claims under policies of casualty insurance and all proceeds of casualty insurance, in each case, to the extent payable by reason of loss or damage to any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral) and all claims under policies of business interruption insurance and all proceeds of business interruption insurance (provided, that with respect to proceeds of business interruption insurance, subject to Section 4.5, 50% of such proceeds shall constitute ABL Priority Collateral and 50% of such proceeds shall constitute Term Loan Priority Collateral);

(k) to the extent not otherwise described above, all Receivables (except to the extent that such Receivables constitute identifiable proceeds of Term Loan Priority Collateral);

(l) all Books to the extent evidencing, relating to, or referring to any of the foregoing (provided that all Books to the extent evidencing, relating to, or referring to any Term Loan Priority Collateral shall also constitute Term Loan Priority Collateral, and the parties shall be governed by Section 3.10 with respect thereto, and their Liens therein, to the extent such Books evidence, relate to or refer to both the ABL Priority Collateral and the Term Loan Priority Collateral and to the extent not divisible by such categories, shall be *pari passu* in right thereto);

(m) all Avoidance Actions against ABL Agent, ABL Lenders or any Bank Product Providers (including each Person as defined herein and as defined under the Existing Intercreditor Agreement);

(n) all Avoidance Actions to the extent relating to ABL Priority Collateral;

(o) and any proceeds of any disgorgement of any Refinancing of the ABL Priority Debt (as defined under the Existing Intercreditor Agreement) from proceeds of the ABL DIP Credit Agreement; and

(p) all substitutions, replacements, accessions, products, or proceeds of any of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to, or destruction of, or other involuntary conversion (including claims in respect of condemnation) of any kind or nature of any or all of the foregoing.

For purposes of clarification, and notwithstanding anything to the contrary set forth in this Agreement, (i) except as expressly set forth above, Intellectual Property shall not constitute ABL Priority Collateral, but instead shall constitute Term Loan Priority Collateral, (ii) any of the items set forth in clauses (a) through (p) of this definition that are or become branded with, or produced through the use or other application of, any Intellectual Property, whether pursuant to the exercise of rights pursuant to Section 3.9 or otherwise, shall constitute ABL Priority Collateral, and no proceeds arising from any Disposition of any such ABL Priority Collateral shall be, or be deemed to be, attributable to Term Loan Priority Collateral, and (iii) without prejudice to all other categories of Term Loan Priority Collateral, and except as otherwise provided in Section 3.11, all interests in real property, all equipment and fixtures, all Equity Interests and the Term Loan Priority Collateral Deposit Account and all cash on deposit therein (other than identifiable proceeds of ABL Priority Collateral) shall constitute Term Loan Priority Collateral.

**"ABL Priority Debt"** means all ABL Debt other than Excess ABL Debt.

**"ABL Retained Interest"** has the meaning set forth in Section 10.2.

**"ABL Security Agreement"** means the "Guaranty and Security Agreement" as that term is defined in the ABL DIP Credit Agreement.

**"Agent"** means ABL Agent or Term Loan Agent, as the context requires.

**"Agreement"** has the meaning set forth in the preamble hereto.

**"Avoidance Actions"** means any and all claims and causes of action of any Borrower's estate arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, together with any proceeds therefrom.

**"Bank Product Agreements"** means the "Bank Product Agreements," as that term is defined in the ABL DIP Credit Agreement as in effect on the date hereof or any substantially similar term in any Refinancing.



**"Bank Product Obligations"** means the "Bank Product Obligations," as that term is defined in the ABL DIP Credit Agreement as in effect on the date hereof or any substantially similar term in any Refinancing; provided that notwithstanding such definition, in no event shall Bank Product Obligations, as used herein, include indebtedness for borrowed money (other than ABL Debt incurred to repay outstanding Bank Product Obligations), it being agreed the customary ACH, customary credit card and customary overdraft facilities shall not constitute indebtedness for borrowed money for purposes of this definition.

**"Bank Product Providers"** means the "Bank Product Providers," as that term is defined in the ABL DIP Credit Agreement as in effect on the date hereof or any substantially similar term in any Refinancing.

**"Bankruptcy Cases"** means the cases of Borrowers and certain Guarantors jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number [ ] and any superseding chapter 7 case or cases.

**"Bankruptcy Code"** means Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor statute.

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

**"Bankruptcy Law"** means the Bankruptcy Code and any other federal, state, or foreign law for the relief of debtors or affecting creditors' rights generally.

**"Books"** means books and records of each Grantor (including each Grantor's Records indicating, summarizing, or evidencing such Grantor's assets (including the Collateral) or liabilities, each Grantor's Records relating to such Grantor's business operations or financial condition, including customer lists, invoices, credit memos, purchase and file orders, and each Grantor's goods or general intangibles related to such items).

**"Borrower"** and **"Borrowers"** have the meaning set forth in the recitals to this Agreement.

**"Borrowing Base"** means the "Borrowing Base" as defined in the ABL DIP Credit Agreement as in effect on the date hereof (including each term used as a defined term within such definition).

**"Business Day"** means any day other than a Saturday, Sunday, or day on which banks in New York City and Chicago, Illinois are authorized or required by law to close.

**"Cash Dominion"** means the exercise of dominion with respect to Borrower's or any Guarantor's deposit accounts, following the delivery of a notice from ABL Agent to the applicable depository bank, pursuant to which, in accordance with the applicable deposit account control agreement, ABL Agent directs that such depository bank follow ABL Agent's instructions with respect to such deposit accounts (and any and all funds in such deposit accounts) and that such depository bank cease following Borrower's or any Guarantor's, as

applicable, instructions with respect to such deposit accounts (and any and all funds in such deposit accounts).

**"Claimholders"** means the ABL Claimholders and the Term Loan Claimholders, or any one of them.

**"Collateral"** means all of the assets of each and every Grantor, whether real, personal or mixed, constituting ABL Collateral or Term Loan Collateral.

**"Collateral Documents"** means the ABL Collateral Documents or the Term Loan Collateral Documents, as the context requires.

**"Debt"** means the ABL Debt or the Term Loan Debt, as the context requires.

**"Disposition"** or **"Dispose"** means the sale, assignment, transfer, license, lease (as lessor), exchange, or other disposition (including any sale and leaseback transaction) of any property by any person (or the granting of any option or other right to do any of the foregoing).

**"Enforcement Action"** means

(a) the taking of any action to enforce any Lien in respect of the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC or other applicable law, or the taking of any action in an attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition,

(b) the exercise of any right or remedy provided to a secured creditor under the ABL Documents or the Term Loan Documents (excluding, for so long as revolving loan commitments have not been terminated or suspended and are otherwise available to provide financing to the Grantors under the ABL DIP Credit Agreement, any exercise of Cash Dominion, but including, in either case, any delivery of any notice to seek to obtain payment directly from any account debtor of any Grantor or other person obligated on any Collateral of any Grantor (other than any depository bank), the taking of any action or the exercise of any right or remedy in respect of the Collateral, or the exercise of any right of setoff or recoupment with respect to obligations owed to any Grantor), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of an obligation,

(c) the Disposition of all or any portion of the Collateral, by private or public sale or any other means,

(d) the solicitation of bids from third parties to conduct the Disposition of all or a material portion of the Collateral,

(e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purpose of valuing, marketing, or Disposing of all or a material portion of the Collateral,

(f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any Equity Interests composing a portion of the Collateral) whether under the ABL Documents, the Term Loan Documents, under applicable law of any jurisdiction, in equity, in an Insolvency Proceeding, or otherwise (including the commencement of applicable legal proceedings or other actions with respect to the Collateral to facilitate the actions described in the preceding clauses), and

(g) the pursuit of ABL Default Dispositions or Term Loan Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time.

**"Enforcement Notice"** means a written notice delivered by either ABL Agent or Term Loan Agent to the other stating (a) that an ABL Default or a Term Loan Default, as applicable, has occurred and is continuing under the ABL DIP Credit Agreement or the Term Loan DIP Credit Agreement, as applicable, and specifying the nature of the relevant event of default, and (b) that an Enforcement Period has commenced with respect to the applicable Priority Collateral.

**"Enforcement Period"** means the period of time following the earlier of (i) receipt by either ABL Agent or Term Loan Agent of an Enforcement Notice from the other or (ii) the commencement by any ABL Claimholder or Term Loan Claimholder of any Enforcement Action, and continuing until the earliest of (a) in case of an Enforcement Period commenced by Term Loan Agent, the Payment in Full of Term Loan Priority Debt, (b) in the case of an Enforcement Period commenced by ABL Agent, the Payment in Full of ABL Priority Debt, or (c) ABL Agent or Term Loan Agent (as applicable) terminates, or agrees in writing to terminate, the Enforcement Period (including in connection with a waiver or cure of the event of default that gave rise to such Enforcement Notice).

**"Equity Interests"** means "Equity Interest" as that term is defined in the ABL DIP Credit Agreement.

**"Excess ABL Debt"** means the sum of (a) the portion of the sum of the Outstanding ABL Principal Obligations that is in excess of the ABL Cap, plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the Outstanding ABL Principal Obligations.

**"Excluded Collateral"** means (a) any assets described as "Excluded Collateral" in the ABL Security Agreement and the Term Loan Security Agreement, (b) Avoidance Actions that are not ABL Priority Collateral or Term Loan Priority Collateral and (c) any other assets of any Grantor, whether real, personal, or mixed, with respect to which a Lien is not granted (and not purported to be granted) as security for the ABL Debt or the Term Loan Debt (excluding, for the avoidance of doubt, any asset that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute Collateral).

**"Existing Intercreditor Agreement"** means that certain Intercreditor Agreement dated as of May 22, 2012, by and between ABL Agent and Term Loan Agent and acknowledged by the Borrowers and each Grantor.

**"Filing Date"** means \_\_\_\_\_, 2013.

**"Final Order"** means an order of a court of competent jurisdiction as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for re-argument or rehearing shall then be pending or, in the event that an appeal, writ of *certiorari*, or re-argument or rehearing thereof has been filed or sought, such order shall have been affirmed or confirmed by the highest court to which such order was appealed, or from which *certiorari*, re-argument or rehearing was sought and the time to take any further appeal, petition for *certiorari* or move for re-argument or rehearing shall have expired; provided, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Federal Rules of Bankruptcy Procedure or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.

**"Financing Order"** means, as applicable under the circumstances, (i) collectively, the order of the Bankruptcy Court entered in the Bankruptcy Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which order is in effect and not stayed, together with all extensions, modifications, and amendments thereto, which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrowers to execute and perform under the terms of the ABL Documents and the Term Loan Documents or (ii) collectively, the order of the Bankruptcy Court entered in the Bankruptcy Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court, which order is in effect and not stayed, together with all extensions, modifications and amendments thereto, which, among other matters, authorizes the Borrowers to obtain credit, incur (or guaranty) Debt, and grant Liens under the ABL Documents and Term Loan Documents, as the case may be, provides for the super priority of the ABL Agent's, Term Loan Agent's, ABL Lenders' and Term Loan Lenders' claims and authorizes the use of cash collateral.

**"Governmental Authority"** means the government of the United States of America or any other nation, any political subdivision thereof, whether state, provincial, or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government.

**"Grantors"** means each Borrower and each Guarantor, and each other person that may, from time to time, execute and deliver an ABL Collateral Document or a Term Loan Collateral Document as a "debtor," "grantor," "obligor," or "pledgor" (or the equivalent thereof) or that may, from time to time, be (or whose assets may be) subject to a judgment lien in favor of any of the ABL Claimholders or any of the Term Loan Claimholders in respect of the ABL Debt or the Term Loan Debt, as applicable, and **"Grantor"** means any one of them.

**"Guarantors"** has the meaning set forth in the recitals to this Agreement and **"Guarantor"** means any one of them.

**"Insolvency Proceeding"** means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor, including the Bankruptcy Cases;

(b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership, liquidation or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;

(c) any liquidation, dissolution, or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any Grantor.

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

**"Intellectual Property"** means the "Intellectual Property" as that term is defined in the Term Loan DIP Credit Agreement as in effect on the date hereof or any substantially similar term under any Refinancing.

**"Junior Agent"** means, with respect to the ABL Priority Collateral, Term Loan Agent, and with respect to the Term Loan Priority Collateral, ABL Agent.

**"Junior Claimholders"** means, with respect to the ABL Priority Collateral, the Term Loan Claimholders, and with respect to the Term Loan Priority Collateral, the ABL Claimholders.

**"Junior Collateral"** means, with respect to the ABL Debt, all Collateral other than ABL Priority Collateral, and with respect to the Term Loan Debt, all Collateral other than Term Loan Priority Collateral.

**"Junior Debt"** means, with respect to the ABL Priority Collateral, the Term Loan Debt, and with respect to the Term Loan Priority Collateral, the ABL Debt.

**"Junior Lenders"** means, with respect to the ABL Priority Collateral, the Term Loan Lenders, and with respect to the Term Loan Priority Collateral, the ABL Lenders.

**"Letters of Credit"** means the "Letters of Credit" issued pursuant to, and as that term is defined in, the ABL DIP Credit Agreement.

**"Lien"** means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of

any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a capital lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing.

**"Loan Documents"** means ABL Documents or Term Loan Documents, as the context requires.

**"Ordinary Course Collections"** has the meaning set forth in Section 4.1.

**"Outstanding ABL Principal Obligations"** means the sum of (x) the outstanding principal amount of all loans and advances (including all amounts constituting capitalized interest, if any) plus (y) the undrawn amount available under all letters of credit plus (z) all outstanding reimbursement obligations in respect of amounts drawn under letters of credit, in each case under or incurred pursuant to the ABL DIP Credit Agreement or any other ABL Documents.

**"Payment in Full of ABL Priority Debt"** means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) payment in U.S. Dollars in full in cash or immediately available funds of all of the ABL Priority Debt (other than outstanding Letters of Credit and Bank Product Obligations and other than unasserted contingent indemnification obligations);

(b) termination or expiration of all commitments, if any, of the ABL Lenders to extend credit to Borrowers;

(c) termination of, or providing cash collateral (in an amount, to the extent, and in the manner required by the ABL DIP Credit Agreement) in respect of, all outstanding Letters of Credit that compose a portion of the ABL Debt;

(d) termination of (and paying the outstanding amount due in respect of), or providing cash collateral (in an amount, to the extent, and in the manner required by the ABL DIP Credit Agreement) in respect of, all Bank Product Obligations, and

(e) providing cash collateral to ABL Agent in such amount as ABL Agent determines is reasonably necessary to secure the ABL Claimholders in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the ABL Claimholders may be entitled to indemnification by any Grantor pursuant to the indemnification provisions in the ABL Documents.

**"Payment in Full of Priority Debt"** means, (a) if the Term Loan Priority Debt constitutes the Priority Debt, the Payment in Full of Term Loan Priority Debt, and (b) if the ABL Priority Debt constitutes the Priority Debt, the Payment in Full of ABL Priority Debt.

**"Payment in Full of Term Loan Priority Debt"** means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) payment in U.S. Dollars in full in cash or immediately available funds of all of the Term Loan Priority Debt (other than unasserted contingent indemnification obligations);

(b) termination or expiration of all commitments, if any, of the Term Loan Lenders to extend credit to Borrowers; and

(c) providing cash collateral to Term Loan Agent in such amount as Term Loan Agent determines is reasonably necessary to secure the Term Loan Claimholders in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the Term Loan Claimholders may be entitled to indemnification by any Grantor pursuant to the indemnification provisions in the Term Loan Documents.

**"person"** means any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority, or other entity.

**"Pledged Collateral"** has the meaning set forth in Section 5.4(a).

**"Prepetition ABL Debt"** means the ABL Debt under the ABL Credit Agreement (as defined in the Existing Intercreditor Agreement).

**"Prepetition Term Loan Debt"** means the Term Loan Debt under the Term Loan Credit Agreement (as defined in the Existing Intercreditor Agreement).

**"Priority Agent"** means, with respect to the ABL Priority Collateral, ABL Agent, and with respect to the Term Loan Priority Collateral, Term Loan Agent.

**"Priority Collateral"** means, with respect to the ABL Debt, all ABL Priority Collateral, and with respect to the Term Loan Debt, all Term Loan Priority Collateral.

**"Priority Claimholders"** means, with respect to the ABL Priority Collateral, the ABL Claimholders, and with respect to the Term Loan Priority Collateral, the Term Loan Claimholders, subject to the reciprocal rights set forth in Section 9.17.

**"Priority Debt"** means, with respect to the ABL Priority Collateral, the ABL Debt, and with respect to the Term Loan Priority Collateral, the Term Loan Debt.

**"Priority Lenders"** means, with respect to the ABL Priority Collateral, the ABL Lenders, and with respect to the Term Loan Priority Collateral, the Term Loan Lenders.

**"Purchase Notice"** has the meaning set forth in Section 10.

**"Receivables"** means all of the following now owned or hereafter arising or acquired assets of any Grantor: (a) all amounts at any time payable to any Grantor in respect of the sale or other Disposition of any Account (except to the extent that such Accounts or Receivables constitute identifiable proceeds of Term Loan Priority Collateral); (b) all interest,

fees, late charges, penalties, collection fees, and other amounts due or to become due or otherwise payable in connection with any Account (except to the extent that such Accounts or Receivables constitute identifiable proceeds of Term Loan Priority Collateral); (c) all payment intangibles (except to the extent that such Collateral constitutes identifiable proceeds of Term Loan Priority Collateral); and (d) all other contract rights, chattel paper, instruments, or other forms of rights to payment, in each case arising from the sale, lease, or other Disposition of inventory, the licensing of inventory, the rendition of services, or otherwise related to any Account (except to the extent that such Accounts or Receivables constitute identifiable proceeds of Term Loan Priority Collateral) or inventory of a Grantor (including, choses in action, causes of action, or other rights and claims against carriers or shippers, rights to indemnification, and identifiable proceeds thereof, casualty or similar types of insurance, in each case to the extent relating to ABL Priority Collateral and identifiable proceeds thereof).

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

**"Recovery"** has the meaning set forth in Section 6.8.

**"Refinance"** means, in respect of any indebtedness, to refinance, extend, renew, supplement, restructure, replace, refund, or repay, or to issue other indebtedness in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers, or agents. **"Refinanced"** and **"Refinancing"** shall have correlative meanings.

**"Remaining Prepetition Term Loan Debt"** means the Prepetition Term Loan Debt that is not Refinanced by or deemed issued or incurred under the Term Loan DIP Credit Agreement.

**"Remaining Prepetition ABL Debt"** means the Prepetition ABL Debt that is not Refinanced by or deemed issued or incurred under the ABL DIP Credit Agreement.

**"Standstill Notice"** means a written notice from ABL Agent to Term Loan Agent or from Term Loan Agent to ABL Agent, as applicable, identified by its terms as a "Standstill Notice" for purposes of this Agreement and stating that an ABL Default or Term Loan Default, as applicable, has occurred and is continuing and that, as a consequence thereof, ABL Agent has declared all of the ABL Priority Debt to be immediately due and payable or the Term Loan Agent has declared all of the Term Loan Priority Debt to be immediately due and payable, as applicable.

**"Standstill Period"** means the period of 120 days commencing on the date on which ABL Agent or Term Loan Agent, as applicable, receives the applicable Standstill Notice.

**"Stated Borrowing Base"** means a borrowing base determined in a manner identical to the Borrowing Base (including all advance rates and all defined terms used therein or in connection therewith, in each case as so defined), and giving full effect to, and reducing availability by the amount of, all reserves (including "Reserves", "Landlord Reserves" (each as defined in the ABL DIP Credit Agreement as in effect on the date hereof) and reserves for any other amounts that are or would be secured by a Lien on the ABL Priority Collateral that would have priority superior to the priority of the Lien in favor of ABL Agent on ABL Priority



Collateral securing the ABL Priority Debt (excluding payment subordination for any "carveout" or similar term under the Financing Orders and reserves for Bankruptcy Code § 503(b)(9) claims, herein "**Lien Priority Reserves**"); provided, however, that for purposes of calculating the Stated Borrowing Base (a) the Co-Collateral Agents shall not revise any "excluding criteria" (as permitted in Co-Collateral Agents' Permitted Discretion within the proviso of each definition of Eligible Accounts and Eligible Inventory) in order to cause ineligible Accounts and ineligible Inventory to be Eligible Accounts or Eligible Inventory; and (b) Co-Collateral Agents shall not reduce the amount of any Lien Priority Reserve (as defined below) unless in Co-Collateral Agents' Permitted Discretion such reduction reflects the reduction of the amount of the claim secured by the Lien having priority superior to the priority of the Lien in favor of ABL Agent on the ABL Priority Collateral; provided further, that the foregoing restriction shall not restrict Co-Collateral Agents' right to establish, increase or decrease other reserves (other than Lien Priority Reserves) against the Borrowing Base.

"**Subsidiary**" of a person means a corporation, partnership, limited liability company, or other entity as to which that person directly or indirectly owns or controls the Equity Interests 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.

"**Term Cash Proceeds Notice**" shall mean a written notice delivered by the Term Loan Agent or any Grantor to the ABL Agent (a) stating either that a Disposition of Term Loan Priority Collateral with respect to specifically identified Collateral is being effected or that an Event of Default has occurred and is continuing under any Term Loan Document and specifying the relevant Event of Default and (b) stating that certain cash proceeds which may be deposited in any Grantor's deposit account, collection account or other account (other than the Term Loan Priority Collateral Deposit Account) constitute Term Priority Collateral, and reasonably identifying the amount of such proceeds and specifying the origin thereof.

"**Term Loan Agent**" has the meaning set forth in the preamble to this Agreement.

"**Term Loan Cash Collateral**" has the meaning set forth in Section 6.2(b).

"**Term Loan Claimholders**" means, as of any date of determination, the holders of the Term Loan Debt at that time, including (a) Term Loan Agent, and (b) the Term Loan Lenders.

"**Term Loan Collateral**" means all of the assets of each and every Grantor, whether real, personal, or mixed, with respect to which a Lien is granted as security for any Term Loan Debt, including all proceeds and products thereof.

"**Term Loan Collateral Documents**" means the Term Loan Security Agreement, the Term Loan Mortgages (if any), each Intellectual Property Security Agreement (as that term is defined in the Term Loan DIP Credit Agreement) and any other agreement, document, or instrument pursuant to which a Lien is granted (or purported to be granted) securing any Term Loan Debt or under which rights or remedies with respect to such Liens are governed, including the Financing Orders.

**"Term Loan DIP Credit Agreement"** has the meaning set forth in the recitals to this Agreement.

**"Term Loan Debt"** means all Obligations (as that term is defined in the Term Loan DIP Credit Agreement) and all other amounts owing, due, or secured under the terms of the Term Loan DIP Credit Agreement or any other Term Loan Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, reasonable attorney's fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, indemnities, guarantees, and all other amounts, in each case above, payable under or secured by any Term Loan Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Term Loan Documents but for the effect of the Insolvency Proceeding, except with respect to a Grantor any such amounts that are not allowed in any Insolvency Proceeding of such Grantor), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured. For purposes of this Agreement, Term Loan Debt shall not include any Prepetition Term Loan Debt except to the extent such Term Debt is Refinanced by or deemed issued or incurred under the Term Loan DIP Credit Agreement.

**"Term Loan Default"** means any "Event of Default", as such term is defined in any Term Loan Document.

**"Term Loan Default Disposition"** has the meaning set forth in Section 5.1(h).

**"Term Loan DIP Financing"** has the meaning set forth in Section 6.2(b).

**"Term Loan DIP Financing Conditions"** means (a) that (i) ABL Agent (as defined hereunder and under the Existing Intercreditor Agreement) retains its Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (ii) as to the ABL Priority Collateral that existed as of the date of such commencement of such Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), ABL Agent's (as defined hereunder and under the Existing Intercreditor Agreement) Liens with respect to such Collateral remain senior and prior to the Liens (inclusive of any Liens securing the Term Loan DIP Financing) of Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement) (or of the agent and lenders with respect to the Term Loan DIP Financing) with respect to such Collateral, and (iii) as to ABL Priority Collateral acquired by the applicable Grantor after the commencement of Insolvency Proceeding (excluding proceeds of ABL Priority Collateral existing prior to the commencement of such Insolvency Proceeding), either (A) neither the ABL Claimholders nor the Term Loan Claimholders (nor the agent and lenders with respect to the Term Loan DIP Financing) obtain a Lien with respect to such Collateral, or (B) if a Lien with respect to such Collateral is granted to secure the Term Loan DIP Financing, then ABL Agent (as defined hereunder and under the Existing Intercreditor Agreement) obtains a Lien with respect to such Collateral and the Liens with respect to such Collateral securing the Term Loan DIP Financing are junior and subordinate to the Liens of ABL Agent (as defined hereunder and under the Existing Intercreditor Agreement) with respect to such Collateral, (b) that the proposed Term

Loan Cash Collateral use or Term Loan DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which any material portion of the material terms are set forth in the Term Loan Cash Collateral order or Term Loan DIP Financing documentation, as applicable, (c) that the proposed Term Loan Cash Collateral order or Term Loan DIP Financing documentation does not require or compel the sale of all or substantially all of the Collateral other than pursuant to the exercise of remedies after default and acceleration of such ABL DIP Financing pursuant to such order or documentation and (d) that the Term Loan DIP Financing is otherwise subject to, and in compliance with, the terms of this Agreement.

**"Term Loan Documents"** means the Term Loan Collateral Documents, the Term Loan DIP Credit Agreement, and each of the other "Loan Documents" (as that term is defined in the Term Loan DIP Credit Agreement) and each of the documents executed in connection with any Term Loan DIP Financing provided by the Term Loan Claimholders unless such documents expressly provide at the time executed that they shall not constitute Term Loan Documents for purposes of this Agreement and that the debt incurred thereunder shall not constitute Term Loan Debt for purposes of this Agreement. .

**"Term Loan Lenders"** means the "Lenders" as that term is defined in the Term Loan DIP Credit Agreement.

**"Term Loan Mortgages"** means each mortgage, deed of trust, and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Term Loan Debt or under which rights or remedies with respect to any such Liens are governed.

**"Term Loan Priority Collateral"** means all now owned or hereafter acquired Term Loan Collateral that does not constitute ABL Priority Collateral (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute ABL Priority Collateral), and, except as provided in Section 3.11, Term Loan Priority Collateral shall include in any event all interests in real property, all Intellectual Property, all equipment and fixtures, all Equity Interests, and all Avoidance Actions against Term Loan Agent or Term Loan Lenders (including each Person as defined herein and as defined under the Existing Intercreditor Agreement), Avoidance Actions to the extent relating to Term Loan Priority Collateral, and any proceeds of any disgorgement of any Refinancing of the Term Loan Priority Debt (as defined under the Existing Intercreditor Agreement) from proceeds of the Term Loan DIP Credit Agreement. Avoidance Action that are not ABL Priority Collateral or Term Loan Priority Collateral as described above are Excluded Collateral.

**"Term Loan Priority Collateral Deposit Account"** means the "Term Loan Priority Collateral Deposit Account" as defined in the Term Loan DIP Credit Agreement (it being understood that any property in such account which constitutes identifiable proceeds of ABL Priority Collateral shall be ABL Priority Collateral).

**"Term Loan Priority Debt"** means all Term Loan Debt.

**"Term Loan Security Agreement"** means the "Security Agreement" as that term is defined in the Term Loan DIP Credit Agreement.

**"Term Retained Interest"** has the meaning set forth in Section 10.1

**"Triggering Event"** means with respect to the purchase option in favor of the Term Loan Claimholders, (i) the occurrence of either (x) the termination of revolving loan commitments under the ABL DIP Credit Agreement or (y) both (I) the suspension of revolving loan commitments or the absence of sufficient availability thereunder for the Requested Credit Extension (as defined below) for any reason and (II) the failure of the ABL Lenders to make the Requested Credit Extension (whether by reinstatement of the revolving loan commitments with sufficient availability to make the Requested Credit Extension, or by extension of an overadvance in the amount necessary to make the Requested Credit Extension or by waiver of any other unsatisfied condition to make the Requested Credit Extension) within two Business Days following the date the Requested Credit Extension would otherwise be required to be made after the applicable request by a Borrower for the Requested Credit Extension (the end of such two Business Day period, the "Trigger Time"), (ii) the acceleration of the ABL Priority Debt and termination of the commitments to advance further revolving loans under the ABL DIP Credit Agreement, (iii) ABL Agent's taking of any Enforcement Action with respect to all or a material portion of the ABL Priority Collateral, or (iv) the occurrence of a Term Loan Default as a result of a failure to make payment of any Term Loan Priority Debt when due under the terms of the Term Loan Documents. As used herein, "Requested Credit Extension" means an extension of credit requested by a Borrower under the ABL DIP Credit Agreement and in an amount so requested (as such request may be amended), which shall not (i) exceed the amount reasonably determined by the relevant Borrower to be necessary for the operation of its business in the normal course and (ii) include any amount for capital expenditures or acquisitions (other than acquisitions of inventory and equipment and other operating property in the ordinary course) or other payments, distributions or transfers that would not be permitted under the terms of the ABL DIP Credit Agreement or this Agreement (including any prohibited payments on account of any Term Loan Debt); provided, however, that if any Requested Credit Extension is made by the ABL Agent or ABL Lenders before receipt of a Purchase Notice (defined below) or if such Purchase Notice is not received by ABL Agent within five Business Days after the Trigger Time, then such Requested Credit Extension shall cease to constitute a Triggering Event for purposes of clause (i)(y)(II) above (provided that any future Requested Credit Extension may result in a Triggering Event in the circumstances specified in such clause).

**"UCC"** means the Uniform Commercial Code (or any similar or comparable legislation) as in effect in any applicable jurisdiction.

**"Use Period"** means the period, with respect to any Term Loan Priority Collateral, which begins on the earlier of (a) the day on which ABL Agent provides Term Loan Agent with written notice that it intends to exercise its rights under Section 3.9 with respect to such Term Loan Priority Collateral, and (b) the 5th Business Day after Term Loan Agent provides ABL Agent with written notice that Term Loan Agent (or its agent) has obtained possession or control, as applicable, of such Term Loan Priority Collateral and ends on the earlier of (i) the 120th day after the date on which ABL Agent initially has the right and ability to occupy, use, possess or control, as applicable, such Term Loan Priority Collateral and (ii) the

date on which Payment in Full of ABL Priority Debt occurs; provided, that if any stay or other order has occurred by operation of law or has been entered by a court of competent jurisdiction that prohibits or limits any of the ABL Claimholders from commencing and continuing to undertake Enforcement Actions or to Dispose of the ABL Priority Collateral, such 120-day period shall be tolled during the pendency of such stay or other order and the Use Period shall be so extended and upon the expiration or lifting of such stay or order, if there are fewer than 90 days remaining in such 120 day period, then such 120 day period shall be extended so that the ABL Claimholders have a Use Period of 90 days remaining upon the expiration or lifting of such stay or order.

1.2 Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The term "or" shall be construed to have, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any term used in this Agreement and not defined in this Agreement shall have the meaning set forth in the ABL DIP Credit Agreement. Unless the context requires otherwise:

(a) except as otherwise provided herein, any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(b) any reference to a definition in an ABL Document shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the ABL Debt;

(c) any reference to a definition in a Term Loan Document shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the Term Loan Debt;

(d) any reference to any agreement, instrument, or other document herein "as in effect on the date hereof" shall be construed as referring to such agreement, instrument, or other document without giving effect to any amendment, restatement, supplement, modification, or Refinancing thereto or thereof occurring after the date hereof;

(e) any definition of, or reference to, ABL Debt or the Term Loan Debt herein shall be construed as referring to the ABL Debt or the Term Loan Debt (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(f) any definition of, or reference to, ABL Collateral or Term Loan Collateral herein shall not be construed as referring to any amounts recovered by a Grantor, as a debtor in possession, or a trustee for the estate of a Grantor, under Section 506(c) of the Bankruptcy Code (or by comparable Persons under any other Bankruptcy Law);

(g) any reference herein to any person shall be construed to include such person's successors and assigns and as to any Grantor shall be deemed to include a receiver, trustee, or debtor-in-possession on behalf of any of such person or on behalf of any such successor or assignee of such person;

(h) except as otherwise expressly provided herein, any reference to ABL Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the ABL Claimholders, any reference to ABL Agent shall be construed as referring to ABL Agent, for itself and on behalf of the other ABL Claimholders, any reference to Term Loan Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the Term Loan Claimholders, any reference to Term Loan Agent shall be construed as referring to Term Loan Agent, for itself and on behalf of the other Term Loan Claimholders, any reference to the ABL Claimholders shall be construed as including ABL Agent, and any reference to the Term Loan Claimholders shall be construed as referring to Term Loan Agent;

(i) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(j) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(k) 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.

## **SECTION 2. Lien Priorities.**

### **2.1 Relative Priorities.**

(a) Subject to Section 2.1(c), notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens in the Collateral securing the Term Loan Debt or of any Liens in the Collateral securing the ABL Debt (including, in each case, notwithstanding whether any such Lien is granted (or secures Debt relating to the period) before or after the commencement of any Insolvency Proceeding) and notwithstanding any contrary provision of the UCC or any other applicable law or the Term Loan Documents or the ABL Documents or any other circumstance whatsoever, ABL Agent and Term Loan Agent hereby agree that:

(i) any Lien with respect to the ABL Priority Collateral securing any ABL Priority Debt or Prepetition ABL Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation, or otherwise, shall be senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing (A) any Term Loan Debt or Prepetition Term Loan Debt or (B) any Excess ABL Debt;

(ii) any Lien with respect to the ABL Priority Collateral securing any Term Loan Debt or Prepetition Term Loan Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt or Prepetition ABL Debt, and (B) senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing any Excess ABL Debt;

(iii) any Lien with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, or any Prepetition Term Loan Debt shall be senior in all respects and prior to any Lien with respect to the Term Loan Priority Collateral securing any ABL Debt or Prepetition ABL Debt; and

(iv) any Lien with respect to the Term Loan Priority Collateral securing any ABL Debt now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, or any Prepetition ABL Debt shall be junior and subordinate in all respects to all Liens with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt or Prepetition Term Loan Debt.

(b) Subject to Section 2.1(c), all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt or Prepetition ABL Debt shall be and remain senior in all respects and prior to all Liens with respect to the Collateral securing any Term Loan Debt or Prepetition Term Loan Debt or any Excess ABL Debt, in each case, for all purposes, whether or not such Liens securing any ABL Priority Debt are subordinated to any Lien securing any other obligation of any Grantor or any other person (but only to the extent that such subordination is permitted pursuant to the terms of the ABL DIP Credit Agreement and the Term Loan DIP Credit Agreement, or as contemplated in Section 6.2). Subject to Section 2.1(c), all Liens with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt or Prepetition Term Loan Debt shall be and remain senior in all respects and prior to all Liens with respect to the Term Loan Priority Collateral securing any ABL Debt or Prepetition ABL Debt for all purposes, whether or not such Liens securing any Term Loan Priority Debt are subordinated to any Lien securing any other obligation of any Grantor or any other person (but only to the extent that such subordination is permitted pursuant to the terms of the ABL DIP Credit Agreement and the Term Loan DIP Credit Agreement, or as contemplated in Section 6.2).

(c) The foregoing and any other provision to the contrary contained in this Agreement notwithstanding, the subordination of the Liens of Junior Agent provided for in this Agreement shall cease to be effective with respect to any part of the Collateral from and after the date on which the Liens of Priority Agent with respect to such Collateral are declared, or ruled to be, invalid, unenforceable, void or not allowed by a court of competent jurisdiction in a final,

non-appealable order (each, a "**Lien Avoidance**") as a result of any (i) action taken by Priority Agent, or any failure by Priority Agent to take any action, with respect to any financing statement (including any amendment to or continuation thereof), mortgage, or other document required to be executed or filed for, or any failure by Priority Agent to take any other action required to establish or maintain the perfection of the Lien of Priority Agent as to such item of the Priority Collateral, or (ii) preferential transfer (within the meaning of Section 547 of the Bankruptcy Code (or similar Bankruptcy Law), fraudulent transfer (within the meaning of Sections 544 or 548 of the Bankruptcy Code (or similar Bankruptcy Law), fraud or other circumstance which results in a Lien Avoidance, in which event the Junior Claimholders shall be entitled to receive and retain, from and after such date, all proceeds with respect to such Collateral to the extent the Liens of Junior Agent are not subject to a Lien Avoidance with respect to such Collateral.

2.2 Prohibition on Contesting Liens or Claims. Each of Term Loan Agent and ABL Agent agrees that it will not (and hereby waives any right to), directly or indirectly (including by or through an affiliate), contest, or support any other person in contesting, in any proceeding (including any Insolvency Proceeding), the extent, validity, attachment, perfection, priority, or enforceability of a Lien held by or on behalf of any of the ABL Claimholders in the Collateral (or the extent, validity, allowability, or enforceability of any ABL Debt secured thereby or purported to be secured thereby) or by or on behalf of any of the Term Loan Claimholders in the Collateral (or the extent, validity, allowability, or enforceability of any Term Loan Debt secured thereby or purported to be secured thereby), as the case may be, or the provisions of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of ABL Agent or Term Loan Agent to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the ABL Debt and the Term Loan Debt as provided in Sections 2.1 and 3.

2.3 New Liens.

(a) So long as no Insolvency Proceeding has been commenced by or against any Grantor, the parties hereto agree that no Grantor shall:

(i) grant or permit any additional Liens on any asset to secure any Term Loan Debt unless such Grantor gives ABL Agent at least 5 Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the ABL Debt concurrently with the grant of a Lien thereon in favor of Term Loan Agent; or

(ii) grant or permit any additional Liens on any asset to secure any ABL Debt unless such Grantor gives Term Loan Agent at least 5 Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Term Loan Debt concurrently with the grant of a Lien thereon in favor of ABL Agent.

(b) To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Claimholders, each Agent



agrees that any amounts received by or distributed to any of the Claimholders pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

#### 2.4 Similar Liens and Agreements.

(a) The parties hereto agree that it is their intention that the ABL Collateral and the Term Loan Collateral be identical except as provided in Section 6 hereof and subject to Section 2.4(b) below. In furtherance of the foregoing and of Section 9.8, the parties hereto agree, subject to the other provisions of this Agreement:

(i) upon request by ABL Agent or Term Loan Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Collateral and the Term Loan Collateral and the steps taken or to be taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Documents and the Term Loan Documents; and

(i) that the ABL Collateral Documents and Term Loan Collateral Documents and guarantees for the ABL Debt and the Term Loan Debt, shall be, in all material respects, substantially the same in terms of scope of collateral and scope of guarantees, other than with respect to the priorities of the Liens granted thereunder.

(b) The foregoing to the contrary notwithstanding, each of the parties agrees that to the extent that ABL Agent or Term Loan Agent obtains a Lien in an asset (of a type that is not included in the types of assets included in the Collateral as of the date hereof or which would not constitute Collateral without a grant of a Lien separate from the ABL Documents or Term Loan Documents, as applicable, as in effect immediately prior to obtaining such Lien on such asset) which the other party to this Agreement elects not to obtain after receiving prior written notice thereof in accordance with the provisions of Section 2.3, the Collateral securing the ABL Debt and the Term Loan Debt will not be identical, and the provisions of the documents, agreements and instruments evidencing such Liens also will not be substantively similar, and any such difference in the scope or extent of perfection with respect to the Collateral resulting therefrom are hereby expressly permitted by this Agreement.

### **SECTION 3. Exercise of Remedies.**

3.1 Exercise of Remedies with respect to the ABL Priority Collateral. Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the Term Loan Claimholders will not exercise or seek to exercise (and instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived) any rights, powers, or remedies with respect to any ABL Priority Collateral (including taking any Enforcement Action with respect to any ABL Priority Collateral); provided, that (i) if a Term Loan Default has occurred and is continuing, Term Loan Agent may take Enforcement Actions with respect to any ABL Priority Collateral after the expiration of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no Term Loan Default is continuing, Term Loan Agent may not take Enforcement Actions with respect to any ABL

Priority Collateral until the expiration of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new Term Loan Default that had not occurred as of the date of the delivery of the earlier Standstill Notice), and (ii) in no event shall Term Loan Agent or any other Term Loan Claimholder exercise any rights or remedies with respect to the ABL Priority Collateral if, notwithstanding the expiration of the Standstill Period, ABL Agent or any other ABL Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by Term Loan Agent with respect to all or any material portion of the ABL Priority Collateral) and be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the ABL Priority Collateral, and (iii) prior to taking any such Enforcement Action, or action to commence or petition for any Insolvency Proceeding after the end of the Standstill Period, Term Loan Agent shall give ABL Agent not more than 20 Business Days and not less than 5 Business Days prior written notice of the intention of Term Loan Agent or any other Term Loan Claimholder to exercise such rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Standstill Period.

3.2 Exercise of Remedies With Respect to the Term Loan Priority Collateral. Until the Payment in Full of the Term Loan Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, ABL Agent will not exercise or seek to exercise (and instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived) any rights, powers, or remedies with respect to any Term Loan Priority Collateral (including taking any Enforcement Action with respect to any Term Loan Priority Collateral) provided, that (i) if an ABL Default has occurred and is continuing, ABL Agent may take Enforcement Actions with respect to any Term Loan Priority Collateral after the expiration of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no ABL Default is continuing, ABL Agent may not take Enforcement Actions with respect to any Term Loan Collateral until the expiration of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new ABL Default that had not occurred as of the date of the delivery of the earlier Standstill Notice), and (ii) in no event shall ABL Agent or any other ABL Claimholder exercise any rights or remedies with respect to the Term Loan Collateral if, notwithstanding the expiration of the Standstill Period, Term Loan Agent or any other Term Loan Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by ABL Agent with respect to all or any material portion of the Term Loan Priority Collateral) and be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the Term Loan Collateral, and (iii) prior to taking any such Enforcement Action, or action to commence or petition for any Insolvency Proceeding after the end of the Standstill Period, ABL Agent shall give Term Loan Agent not more than 20 Business Days and not less than 5 Business Days prior written notice of the intention of ABL Agent or any other ABL Claimholder to exercise such rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Standstill Period.

### 3.3 Exclusive Enforcement Rights.

(a) Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the

first proviso to Section 3.1(a), the ABL Claimholders shall have the exclusive right to take Enforcement Actions with respect to the ABL Priority Collateral without any consultation with or the consent of any of the Term Loan Claimholders. Until the Payment in Full of Term Loan Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the first proviso to Section 3.2(a), the Term Loan Claimholders shall have the exclusive right to take Enforcement Actions with respect to the Term Loan Priority Collateral (and in connection therewith, subject to Section 3.9, make determinations regarding the release or Disposition thereof or any restrictions with respect thereto) without any consultation with or the consent of any of the ABL Claimholders.

(b) In connection with (i) any Enforcement Action with respect to the ABL Priority Collateral, the ABL Claimholders may enforce the provisions of the ABL Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion, or (ii) any Enforcement Action with respect to the Term Loan Priority Collateral, the Term Loan Claimholders may enforce the provisions of the Term Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under applicable law.

3.4 Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, any Claimholder may:

(a) if an Insolvency Proceeding has been commenced by or against any Grantor, file a claim or statement of interest with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Loan Claimholder, the Term Loan Debt, and in each case the Collateral securing such Debt;

(b) take any action (not adverse to the priority status of the Liens on the Priority Collateral held by the Priority Agent with respect thereto, or the rights of the Priority Agent or any other Priority Claimholder to undertake Enforcement Actions with respect thereto) in order to create or perfect its Lien in and to the Collateral;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of (i) in the case of a claim of an ABL Claimholder, the ABL Claimholders, or (ii) in the case of a claim of a Term Loan Claimholder, the Term Loan Claimholders, in each case including any claims secured by the Collateral, if any;

(d) vote on any plan of reorganization and make any filings and motions that are, in each case, not in contravention of the provisions of this Agreement, with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Loan Claimholder, the Term Loan Debt, and (in each case) the Collateral;

(e) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Priority Collateral of

the Priority Agent initiated by such Priority Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with an Enforcement Action by such Priority Agent (it being understood that neither the Junior Agent nor any Junior Claimholder shall be entitled to receive any proceeds from the Priority Collateral unless otherwise expressly permitted herein).

### 3.5 Retention of Proceeds.

(a) Prior to the Payment in Full of ABL Priority Debt, the Term Loan Claimholders shall not be permitted to retain any proceeds of ABL Priority Collateral in connection with any Enforcement Action and any such proceeds received or retained will be subject to Section 4.2.

(b) Prior to the Payment in Full of Term Loan Priority Debt, the ABL Claimholders shall not be permitted to retain any proceeds of Term Loan Priority Collateral in connection with any Enforcement Action, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

(c) **[Intentionally Omitted.]**

(d) In the event of any Disposition or series of related Dispositions that includes (i) the Equity Interests issued by a Grantor that has an interest in ABL Priority Collateral and Term Loan Priority Collateral or (ii) ABL Priority Collateral and Term Loan Priority Collateral, then solely for purposes of this Agreement and unless otherwise agreed in writing by ABL Agent and Term Loan Agent, the proceeds of any such Disposition of Collateral consisting of Accounts and Inventory (or in the case of a Disposition of Equity Interests issued by a Grantor, any ABL Priority Collateral consisting of Accounts and Inventory in which such Grantor has an interest) shall be allocated to the ABL Priority Collateral (up to the ABL Cap) in an amount not less than the Stated Borrowing Base attributable to such Accounts and Inventory when such Accounts and Inventory constituted "Eligible Accounts" and "Eligible Inventory" (as such terms are defined the ABL DIP Credit Agreement as in effect on the date hereof) whether or not such Accounts and Inventory are included in the Stated Borrowing Base at the time of such Disposition.

3.6 Non-Interference. Subject to any specific provision of this Agreement to the contrary, each of Term Loan Agent and ABL Agent hereby:

(a) agrees that the Junior Claimholders will not take any action that would restrain, hinder, limit, delay, or otherwise interfere with any Enforcement Action taken in compliance with applicable law by the Priority Agent with respect to its Priority Collateral, including any Disposition of such Priority Collateral, whether by foreclosure or otherwise;

(b) waives any and all rights that any Junior Claimholder may have as a junior lien creditor or otherwise to object to the manner in which the Priority Agent or the Priority Claimholders seek to enforce or collect their Debt or, provided such enforcement of Liens is in compliance with applicable law, the Liens securing such Debt granted in any of the Priority Collateral, regardless of whether any action or failure to act by or on behalf of such Priority

Agent or the Priority Claimholders is adverse to the interest of the Junior Agent or the Junior Claimholders;

(c) waives any and all rights that any Junior Claimholder may have to oppose, object to, or seek to restrict the Priority Agent or any Priority Claimholder from exercising their rights to set off or credit bid its Debt; and

(d) acknowledges and agrees that no covenant, agreement, or restriction contained in its Collateral Documents or any other of its Loan Documents (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Priority Agent or the Priority Claimholders with respect to their Priority Collateral as set forth in this Agreement and such Priority Agent's Loan Documents; provided, that the taking of certain Enforcement Actions or other actions may give rise to a default or event of default under a Loan Document.

3.7 Unsecured Creditor Remedies. Except as set forth in Sections 2.2, 3.1, 3.2, 3.6, and 6, the Agents and the other Claimholders may exercise rights and remedies as unsecured creditors generally against any Grantor in accordance with the terms of the applicable Loan Documents and applicable law so long as doing so is not, directly or indirectly, inconsistent with the terms of this Agreement; provided, that in the event that any Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to its Debt, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing such Debt.

3.8 [Reserved].

3.9 Inspection and Access Rights.

(a) If any Term Loan Claimholder, or any agent, representative or affiliate of any of the Term Loan Claimholders, or any receiver, shall, after any Term Loan Default, obtain possession or physical control of any of the real properties subject to a Lien pursuant to the Financing Order, or any of the tangible Term Loan Priority Collateral located on any premises or control over any intangible Term Loan Priority Collateral, Term Loan Agent shall promptly notify ABL Agent in writing of that fact, and ABL Agent may at any time thereafter notify Term Loan Agent in writing if and when ABL Agent desires to exercise its access rights under this Section 3.9. In addition, if ABL Agent, or any agent, representative or affiliate of ABL Agent, or any receiver, shall obtain possession or physical control of any of the real properties subject to a Lien pursuant to the Financing Order, or any of the tangible Term Loan Priority Collateral or control over any intangible Term Loan Priority Collateral, following the delivery to Term Loan Agent of an Enforcement Notice, then ABL Agent may at any time thereafter notify Term Loan Agent in writing that ABL Agent is exercising its access rights under this Agreement under either circumstance. Upon delivery of such notice by ABL Agent to Term Loan Agent, the parties shall confer in good faith to coordinate with respect to ABL Agent's exercise of such access rights. Consistent with the definition of "Use Period," access rights may apply to differing parcels of real properties subject to a Lien pursuant to the Financing Order and to different assets that constitute a portion of the Term Loan Priority Collateral, in each case at

differing times, in which case, a differing Use Period will apply to each such property and to each such portion of the Term Loan Priority Collateral.

(b) Without limiting any rights any of the ABL Claimholders may otherwise have under applicable law or by agreement and whether or not any of the Term Loan Claimholders has commenced and is continuing to undertake any Enforcement Action, ABL Agent or any other person (including any of the ABL Claimholders) acting with the consent, or on behalf, of ABL Agent, shall have an irrevocable, non-exclusive right to have access to, and a royalty-free and rent-free license and right to use the Term Loan Priority Collateral (including, without limitation, equipment, fixtures, Intellectual Property, general intangibles and real property and equipment, processors, computers and other machinery related to the storage or processing of records, documents or files) during the Use Period (i) during normal business hours on any Business Day, to access the ABL Priority Collateral that (A) is stored or located in or on, (B) has become an accession with respect to (within the meaning of Section 9-335 of the UCC), or (C) has been commingled with (within the meaning of Section 9-336 of the UCC), Term Loan Priority Collateral, and (ii) in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, process raw materials or work-in-process into finished Inventory, take possession of, move, package, prepare and advertise for sale or disposition, sell (by public auction, private sale or a "store closing," "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in Grantors' business), store, collect, take reasonable actions to protect, secure and otherwise enforce the rights of ABL Agent in and to the ABL Priority Collateral, or otherwise deal with the ABL Priority Collateral, in each case without the involvement of or interference by any of the Term Loan Claimholders or liability to any of the Term Loan Claimholders, except as provided in Section 3.9(c). This Agreement will not restrict the rights of Term Loan Agent to sell, assign or otherwise transfer the related Term Loan Priority Collateral prior to the expiration of the Use Period if (but only if) the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.9.

(c) During the period of actual occupation, use or control by ABL Agent (or its respective employees, agents, advisers and representatives) of any Term Loan Priority Collateral, ABL Agent shall, and shall be obligated to, (i) repair at their expense any physical damage (ordinary wear and tear excepted) to such Term Loan Priority Collateral caused by such occupancy, use or control by ABL Agent or its agents, representatives or designees, and to leave such Term Loan Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted, (ii) pay any third-party expenses directly related thereto, including incremental costs with respect to heat, light, electricity, water, security, maintenance and other items with respect to that portion of any premises so used or occupied, or that arise as a result of such use, to the extent such costs would not have been incurred but for the Use Period and the exercise of ABL Agent's rights under this Section 3.9, and (iii) ABL Agent shall indemnify Term Loan Claimholders on demand for all costs (including attorneys' fees and disbursements), losses, damages and liabilities incurred by any of them as a result of such occupancy, use or control, including damage to Term Loan Priority Collateral (subject to ordinary wear and tear as contemplated herein) and including all losses, damages and liabilities so incurred to the extent arising from any claim by a third party against such Term Loan Claimholders as determined by a

Final Order of a court of competent jurisdiction to be the direct result of or attributable to any action by ABL Agent (or its representatives) pursuant to the exercise of its rights of access and the use under Section 3.9 and so long as such loss, damage and/or liability is not caused by the negligent acts or willful misconduct of any Term Loan Claimholder as determined by a Final Order of a court of competent jurisdiction (such indemnification payments to be subject to indemnification by the Grantors to the extent provided in the ABL DIP Credit Agreement and to constitute ABL Priority Debt for all purposes hereunder); provided, that ABL Agent will not be liable for any diminution in the value of the Term Loan Priority Collateral caused by the absence of the ABL Priority Collateral therefrom. Notwithstanding the foregoing, in no event shall ABL Agent have any liability to any of the Term Loan Claimholders pursuant to this Section 3.9 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by ABL Agent of its rights under this Section 3.9 and ABL Agent shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by ABL Agent, or for any diminution in the value of the Term Loan Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Term Loan Priority Collateral by ABL Agent in the manner and for the time periods specified under this Section 3.9 and subject to the terms hereof. Without limiting the rights granted in this Section 3.9, ABL Agent shall use commercially reasonable efforts to cooperate with Term Loan Agent in connection with any efforts made by the Term Loan Claimholders to sell the Term Loan Priority Collateral, without the involvement of or interference by any of the ABL Claimholders or liability to any of the ABL Claimholders, except as provided in Section 3.9(c).

(d) Consistent with the definition of the term "Use Period," if any order or injunction is issued or stay is granted or is otherwise effective by operation of law that prohibits ABL Agent from exercising any of its rights hereunder, then the Use Period granted to ABL Agent under this Section 3.9 shall be stayed during the period of such prohibition and shall continue thereafter for the number of days remaining as required under this Section 3.9. Term Loan Agent agrees, for the benefit of ABL Agent, that it shall not sell or dispose of any of the Term Loan Priority Collateral during the Use Period unless the buyer agrees in writing to acquire the Term Loan Priority Collateral subject to the terms of Section 3.9 of this Agreement and agrees therein to comply with the terms of this Section 3.9. The rights of ABL Agent under this Section 3.9 during the Use Period shall continue notwithstanding such foreclosure, sale or other disposition by Term Loan Agent.

(e) ABL Agent shall not be obligated to pay any amounts to the Term Loan Claimholders (or any Person claiming by, through or under the Term Loan Claimholders, including any purchaser of the Term Loan Priority Collateral) or to any Grantor, for or in respect of the use by ABL Agent of the Term Loan Priority Collateral, except as set forth in Section 3.9(c) and Section 3.9(g). In each case, all amounts paid by ABL Agent hereunder shall be added to the outstanding principal balance of the ABL Debt.

(f) ABL Agent shall use the Term Loan Priority Collateral pursuant to this Section 3.9 in accordance with applicable law and in a commercially reasonable manner.

(g) The Term Loan Agent (i) will cooperate with ABL Agent, at the sole cost and expense of the ABL Agent (subject to indemnification by the Grantors as ABL Debt) in its efforts pursuant to Section 3.9(b) to enforce its security interest in the ABL Priority Collateral and to finish any work-in-process and assemble the ABL Priority Collateral, (ii) will not hinder or restrict in any respect ABL Agent from enforcing its security interest in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral pursuant to Section 3.9(b) in accordance with this Agreement, subject, however to the terms and conditions of this Agreement, and (iii) will, subject to the rights of any landlords under real estate leases and other third parties having relevant rights, permit ABL Agent, its employees, agents, advisers and representatives to exercise the rights described in Section 3.9(b) subject to the terms and conditions of this Agreement.

(h) Subject to the terms hereof, Term Loan Agent may advertise and conduct public auctions or private sales of the Term Loan Priority Collateral, without the involvement of, or interference by, any of the ABL Claimholders or liability to any of the ABL Claimholders as long as, in the case of an actual sale, the respective purchaser assumes and agrees in advance in writing to the obligations of Term Loan Agent under this Section 3.9. If ABL Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the real property included within the Term Loan Priority Collateral, ABL Agent shall provide Term Loan Agent with reasonable prior notice of such sale and shall use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt Term Loan Agent's use of such real property.

(i) For the avoidance of doubt, and without limiting the generality of the other provisions of this Agreement, it is hereby acknowledged and agreed that ABL Agent shall have the right to bring an action to enforce its rights under this Section 3.9 and Section 3.10, including an action seeking possession of the applicable Collateral (subject to and on the terms and conditions of this Agreement) or specific performance of this Section 3.9 and Section 3.10, and Term Loan Agent shall have the right to bring an action to enforce its rights under this Section 3.9 and Section 3.10, including an action seeking recovery of indemnities, expense reimbursement and other amounts owing under Section 3.9 and Section 3.10.

3.10 Sharing of Information and Access. In the event that ABL Agent shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any Books of any Grantor which contain information identifying or pertaining to any of the Term Loan Priority Collateral, ABL Agent shall, upon request from Term Loan Agent and as promptly as practicable thereafter, either make available to Term Loan Agent such books and records for inspection and duplication or provide to Term Loan Agent copies thereof. In the event that Term Loan Agent shall, in the exercise of its rights under the Term Loan Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the ABL Priority Collateral, Term Loan Agent shall, upon request from ABL Agent and as promptly as practicable thereafter, either make available to ABL Agent such books and records for inspection and duplication or provide to ABL Agent copies thereof.

3.11 Tracing of and Priorities in Proceeds. Notwithstanding anything to the contrary contained in this Agreement, any Term Loan Document or any ABL Document, until the Payment in Full of ABL Priority Debt occurs Term Loan Agent, for itself and on behalf of the



Term Claimholders, agrees that (i) it is the intention of the parties that only Term Loan Priority Collateral or proceeds thereof shall be deposited in the Term Loan Priority Collateral Deposit Account and (ii) prior to the receipt of a Term Cash Proceeds Notice, and except with respect to Term Loan Priority Collateral, or proceeds thereof reasonably identified in a Term Cash Proceeds Notice, the ABL Claimholders are hereby permitted to treat all cash, cash equivalents, Money, collections and payments deposited in or credited to any other Grantor's deposit account, collection account or other bank account or otherwise received by any ABL Claimholders as ABL Priority Collateral, and except as otherwise provided above, no such amounts deposited in or credited to any such accounts (other than the Term Loan Priority Collateral Deposit Account) or received by any ABL Claimholders or applied to the ABL Debt shall be subject to disgorgement or deemed to be held in trust for the benefit of the Term Loan Claimholders (and all claims of the Term Loan Agent or any other Term Loan Claimholders to such amounts are hereby waived); provided, that any identifiable cash proceeds of specific Term Loan Priority Collateral identified in any Term Cash Proceeds Notice which are so deposited or otherwise received by any ABL Claimholder shall remain Term Loan Priority Collateral and shall be subject to Section 4.2(c); and provided further, however, that this consent shall not inure to the benefit of any of the Grantors or be deemed a waiver of or modification of any provision of the Term Loan Documents, including any provision requiring application of such proceeds to repayment of the Term Loan Debt or otherwise in the manner provided for in the Term Loan Documents or any default or event of default that may result from any Grantor's failure to comply with such requirements.

#### **SECTION 4. Proceeds.**

##### **4.1 Application of Proceeds.**

(a) Subject to the terms of the Financing Orders (including the application of ABL Priority Collateral to the repayment of ABL Debt under the ABL Credit Agreement), regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, except as otherwise provided in Section 2.1, any ABL Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action and any ABL Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien in such Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such ABL Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) first, to the payment in full in cash of costs and expenses of ABL Agent in connection with such Enforcement Action or Insolvency Proceeding,

(ii) second, to the payment in full in cash or cash collateralization of the ABL Priority Debt in accordance with the ABL Documents or the Prepetition ABL Debt in accordance with the ABL Documents (as defined under the Existing Intercreditor Agreement,

(iii) third, to the payment in full in cash of costs and expenses of Term Loan Agent in connection with such Enforcement Action or Insolvency Proceeding (to

the extent Term Loan Agent's Enforcement Action or action in the Insolvency Proceeding was permitted hereunder),

(iv) fourth, to the payment in full in cash of the Term Loan Priority Debt in accordance with the Term Loan Documents, and

(v) fifth, to the payment in full in cash of the Excess ABL Debt in accordance with the ABL Documents.

(b) Notwithstanding the foregoing, if any Enforcement Action with respect to the ABL Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by ABL Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. ABL Agent shall have no duty or obligation to Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; provided, that any non-cash proceeds received by ABL Agent (other than any non-cash proceeds received on account of any Term Loan Secured Claim) may be distributed by ABL Agent to the ABL Claimholders in full or partial satisfaction of ABL Debt in an amount determined by ABL Agent acting at the direction of the requisite ABL Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding. No receipt and application of any Collateral, or proceeds thereof, received in the ordinary course of business (such Collateral, and the proceeds thereof, "**Ordinary Course Collections**") shall constitute an Enforcement Action for purposes of this Agreement and all Ordinary Course Collections received by ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, pursuant to the ABL DIP Credit Agreement and the Financing Orders (including application to the ABL Debt (as defined under the Existing Intercreditor Agreement) under the ABL Credit Agreement); provided, however, that this provision shall not inure to the benefit of any of the Grantors or be deemed a waiver of or modification of any provision of the Term Loan Documents, including any provision requiring application of such proceeds to repayment of the Term Loan Debt or otherwise in the manner provided for in the Term Loan Documents or any default or event of default that may result from any Grantor's failure to comply with such requirements.

(c) Subject to the terms of the Financing Orders, regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, except as otherwise provided in Section 2.1, any Term Loan Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action and any Term Loan Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien in such Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such Term Loan Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) first, to the payment in full in cash of costs and expenses of Term Loan Agent in connection with such Enforcement Action or Insolvency Proceeding,

(ii) second, to the payment in full in cash of the Term Loan Priority Debt in accordance with the Term Loan Documents or the Prepetition Term Loan Debt in

accordance with the Term Loan Documents (as defined in the Existing Intercreditor Agreement),

(iii) third, to the payment in full in cash of costs and expenses of ABL Agent in connection with such Enforcement Action or Insolvency Proceeding (to the extent ABL Agent's Enforcement Action or action in the Insolvency Proceeding was permitted hereunder),

(iv) fourth, to the payment in full in cash of the ABL Priority Debt in accordance with the ABL Documents, and

(v) fifth, to the payment in full in cash of the Excess ABL Debt in accordance with the ABL Documents.

(d) Notwithstanding the foregoing, if any Enforcement Action with respect to the Term Loan Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by Term Loan Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. Term Loan Agent shall have no duty or obligation to Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; provided, that any non-cash proceeds received by Term Loan Agent (other than any non-cash proceeds received on account of any ABL Secured Claim) may be distributed by Term Loan Agent to the Term Loan Claimholders in full or partial satisfaction of Term Loan Debt in an amount determined by Term Loan Agent acting at the direction of the requisite Term Loan Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding.

#### 4.2 Turnover.

(a) Unless and until the Payment in Full of ABL Priority Debt and the Prepetition ABL Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), except as otherwise provided in Section 2.1, any ABL Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3) received by any of the Term Loan Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the Term Loan Claimholders, or (ii) as a result of any Term Loan Claimholder's collusion with any Grantor in violating the rights of the ABL Claimholders (within the meaning of Section 9-332 of the UCC) (as defined hereunder and under the Existing Intercreditor Agreement), shall be segregated and held in trust and forthwith paid over to ABL Agent (as defined hereunder and under the Existing Intercreditor Agreement) in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided, that in the case of any other proceeds of ABL Priority Collateral not governed by clauses (i) or (ii) above received by any Term Loan Claimholders in connection with a Disposition of ABL Priority Collateral by any Grantor, if neither any Grantor nor any ABL Claimholder provides written notice of such Disposition to Term Loan Agent within 90 days after such Disposition specifying the amount and source of such proceeds, no Term Loan Claimholder shall have any obligation to pay over any proceeds of such Disposition to ABL Agent (as defined hereunder and under the Existing

Intercreditor Agreement) except as otherwise provided by Section 3.11. ABL Agent (as defined hereunder and under the Existing Intercreditor Agreement) is hereby authorized to make any such endorsements as agent for the Term Loan Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of ABL Priority Debt and the Prepetition ABL Debt.

(b) **[Intentionally Omitted.]**

(c) Unless and until the Payment in Full of Term Loan Priority Debt and the Prepetition Term Loan Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), except as otherwise provided in Section 2.1, any Term Loan Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3 received by any of the ABL Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the ABL Claimholders, or (ii) as a result of any ABL Claimholder's collusion with any Grantor in violating the rights of any of the Term Loan Claimholders (within the meaning of Section 9-332 of the UCC) (as defined hereunder and under the Existing Intercreditor Agreement), shall be segregated and held in trust and forthwith paid over to Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement) for the benefit of the Term Loan Claimholders (as defined hereunder and under the Existing Intercreditor Agreement) in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided, that in the case of any proceeds of Term Loan Priority Collateral received by any of the ABL Claimholders in connection with a Disposition of Term Loan Priority Collateral by any Grantor, if a Grantor does not provide prior written notice of such Disposition to ABL Agent specifying the amount and source of such proceeds, no ABL Claimholder shall have any obligation to pay over any proceeds of such Disposition to Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement). Term Loan Agent (as defined hereunder and under the Existing Intercreditor Agreement) is hereby authorized to make any such endorsements as agent for the ABL Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of the Term Loan Priority Debt and the Prepetition Term Loan Debt.

(d) **[Intentionally Omitted.]**

(e) Term Loan Agent agrees that if, at any time, all or part of any payment with respect to any ABL Debt secured by any ABL Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to ABL Agent any payment received by it in respect of any such ABL Priority Collateral and shall promptly turn any such ABL Priority Collateral then held by it over to ABL Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such ABL Debt.

(f) ABL Agent agrees that if, at any time, all or part of any payment with respect to any Term Loan Debt secured by any Term Loan Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to Term Loan Agent any payment received by it in respect of any such Term Loan Priority Collateral and shall promptly turn any such Term Loan Priority Collateral then held by it over to Term Loan

Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such Term Loan Debt.

4.3 No Subordination of the Relative Priority of Claims. Anything to the contrary contained herein notwithstanding, the subordination of the Liens of the Term Loan Claimholders in respect of the ABL Priority Collateral to the Liens of the ABL Claimholders therein and of the Liens of the ABL Claimholders in respect of the Term Loan Priority Collateral to the Liens of the Term Loan Claimholders therein as set forth herein is with respect to the priority of their respective Liens in and to the Collateral held by or on behalf of them only and shall not constitute a subordination in right of payment of the Term Loan Debt to the ABL Debt or a subordination in right of payment of the ABL Debt to the Term Loan Debt.

4.4 Intentionally Omitted.

4.5 Prepayments. Without the prior written consent of ABL Agent, no Term Loan Claimholder will take, demand, or receive from any Grantor any voluntary prepayment of principal of "Term Loans" (as defined in the Term Loan DIP Credit Agreement) made from ABL Priority Collateral or from any proceeds of ABL Debt. Notwithstanding anything herein to the contrary, the ABL Agent, on behalf of itself and the other ABL Claimholders, and the Term Loan Agent, on behalf of itself and the other Term Loan Claimholders, agree that mandatory prepayments of Term Loan Debt required under the Term Loan DIP Credit Agreement may be made with (i) 100% of the net proceeds of any "Debt" (as defined in the Term Loan DIP Credit Agreement) incurred to Refinance the Term Loan Debt, (ii) 50% of the net proceeds of any other "Debt" (as so defined) incurred by any Grantor (other than purchase money Debt the proceeds of which are applied to the purchase price of the property financed and other than ABL Debt), (iii) 50% of the net proceeds of any issuance of "Equity Interests" (as defined in the Term Loan DIP Credit Agreement) to a person other than a Grantor), (iv) subject to Section 3.5(d), 100% of "Extraordinary Receipts" (as defined in the Term Loan DIP Credit Agreement) to the extent directly attributable to or received in respect of the Term Loan Priority Collateral, (v) 0% of all "Extraordinary Receipts" (as so defined) to the extent directly attributable to or received in respect of ABL Priority Collateral prior to Payment in Full of ABL Priority Debt, and 100% of all "Extraordinary Receipts" (as so defined) to the extent directly attributable to or received in respect of ABL Priority Collateral after Payment in Full of ABL Priority Debt, (vi) 50% of all other "Extraordinary Receipts" (as so defined), (vii) 50% of the proceeds of business interruption insurance, (viii) 100% of the proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case to the extent directly attributable to or received in respect of the Term Loan Priority Collateral, (ix) 0% of the proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case to the extent directly attributable to or received in respect of ABL Priority Collateral (calculated as determined in Section 5.2) prior to Payment in Full of ABL Priority Debt, and 100% of the proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case to the extent directly attributable to or received in respect of ABL Priority Collateral (calculated as determined in Section 5.2) after Payment in Full of ABL Priority Debt, (x) subject to Section 3.5(d), 100% of the proceeds of Term Loan Priority Collateral, and (xi)

subject to Section 6.8, 100% of all other proceeds of ABL Priority Collateral received after Payment in Full of ABL Priority Debt. If any prepayments in respect of the Term Loan Debt not permitted above are received by one or more of the Term Loan Claimholders at any time before the Payment in Full of the ABL Priority Debt, they shall be forthwith paid over to ABL Agent for deposit by the ABL Agent in the relevant Grantor's operating deposit account.

4.6 Application of Payments. Subject to the other terms of this Agreement and the Financing Orders (including application of proceeds of ABL Priority Collateral to the repayment of ABL Debt under the ABL Credit Agreement), all payments received (not in violation of this Agreement) by (a) the ABL Claimholders may be applied, reversed, and reapplied, in whole or in part, to the ABL Debt to the extent provided for in the ABL Documents, and (b) the Term Loan Claimholders may be applied, reversed, and reapplied, in whole or in part, to the Term Loan Debt to the extent provided for in the Term Loan Documents.

4.7 Revolving Nature of ABL Debt. Term Loan Agent, acknowledges and agrees that the ABL DIP Credit Agreement includes a revolving commitment and that the amount of the ABL Debt that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed.

## **SECTION 5. Releases; Dispositions; Other Agreements.**

### **5.1 Releases.**

(a) ABL Agent shall have the exclusive right to make determinations regarding the release or Disposition of any ABL Priority Collateral pursuant to the terms of the ABL Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to any of the Term Loan Claimholders.

(b) Term Loan Agent shall have the exclusive right to make determinations regarding the release or Disposition of any Term Loan Priority Collateral pursuant to the terms of the Term Loan Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to any of the ABL Claimholders.

(c) If, in connection with a Disposition pursuant to any Enforcement Action by ABL Agent as provided for in Section 3, ABL Agent releases any of its Liens on any part of the ABL Priority Collateral (or such Liens are released by operation of law), then, provided that all of the proceeds of such Disposition are applied to permanently repay the ABL Priority Debt and, in the case of repayment of principal, reduce any existing commitment to lend under the ABL Documents by an equal amount, the Liens of Term Loan Agent on such ABL Priority Collateral, shall be automatically, unconditionally, and simultaneously released.

(d) If, in connection with a Disposition pursuant to any Enforcement Action by Term Loan Agent as provided for in Section 3, Term Loan Agent releases any of its Liens on any part of the Term Loan Priority Collateral (or such Liens are released by operation of law), then, provided that all of the proceeds of such Disposition are applied to permanently repay the Term Loan Priority Debt, the Liens of ABL Agent on such Term Loan Priority Collateral, shall be automatically, unconditionally, and simultaneously released.

(e) If, in connection with any Disposition of any ABL Priority Collateral permitted under the terms of the ABL Documents and the Term Loan Documents as in effect as of the date hereof, ABL Agent releases any of its Liens on the portion of the ABL Priority Collateral that is the subject of such Disposition, other than (i) in connection with an Enforcement Action or the Payment in Full of ABL Priority Debt, or (ii) after the occurrence and during the continuance of any Term Loan Default, then the Liens of Term Loan Agent on such ABL Priority Collateral shall be automatically, unconditionally, and simultaneously released.

(f) If, in connection with any Disposition of any Term Loan Priority Collateral permitted under the terms of the Term Loan Documents and the ABL Documents as in effect as of the date hereof, Term Loan Agent releases any of its Liens on the portion of the Term Loan Priority Collateral that is the subject of such Disposition, other than (i) in connection with an Enforcement Action or the Payment in Full of Term Loan Priority Debt, or (ii) after the occurrence and during the continuance of any ABL Default, then the Liens of ABL Agent on such Term Loan Priority Collateral shall be automatically, unconditionally, and simultaneously released.

(g) In the event of any private or public Disposition of all or any material portion of the ABL Priority Collateral by one or more Grantors with the consent of ABL Agent after the occurrence and during the continuance of an ABL Default (and prior to the Payment in Full of ABL Priority Debt), which Disposition is conducted by such Grantors with the consent of ABL Agent in connection with good faith efforts by ABL Agent to collect the ABL Debt through the Disposition of ABL Priority Collateral (any such Disposition, an "**ABL Default Disposition**"), then the Liens of Term Loan Agent on such ABL Priority Collateral shall be automatically, unconditionally, and simultaneously released so long as (i) ABL Agent also releases its Liens on such ABL Priority Collateral, and (ii) the net cash proceeds of any such ABL Default Disposition are applied in accordance with Section 4.1(a) (as if they were proceeds received in connection with an Enforcement Action) and any commitment to lend under the ABL Documents, if in effect, is permanently reduced by the amount so applied to repay principal.

(h) In the event of any private or public Disposition of all or any material portion of the Term Loan Priority Collateral by one or more Grantors with the consent of Term Loan Agent after the occurrence and during the continuance of a Term Loan Default (and prior to the Payment in Full of Term Loan Priority Debt), which Disposition is conducted by such Grantors with the consent of Term Loan Agent in connection with good faith efforts by Term Loan Agent to collect the Term Loan Debt through the Disposition of Term Loan Priority Collateral (any such Disposition, a "**Term Loan Default Disposition**"), then the Liens of ABL Agent on such Term Loan Priority Collateral shall be automatically, unconditionally, and simultaneously released so long as (i) Term Loan Agent also releases its Liens on such Term Loan Priority Collateral, and (ii) the net cash proceeds of any such Term Loan Default Disposition are applied in accordance with Section 4.1(c) (as if they were proceeds received in connection with an Enforcement Action).

(i) To the extent that the Liens of Term Loan Agent in and to any ABL Priority Collateral are to be released as provided in this Section 5.1,

(i) Term Loan Agent shall promptly, upon the written request of ABL Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as ABL Agent may reasonably require in connection with such Disposition to evidence and effectuate such release; provided, that any such release or UCC amendment by Term Loan Agent shall not extend to or otherwise affect any of the rights, if any, of Term Loan Agent to the proceeds from any such Disposition of any Collateral,

(ii) from and after the time that the Liens of the Term Loan Agent in and to such Term Loan Priority Collateral are released, Term Loan Agent shall be automatically and irrevocably deemed to have authorized ABL Agent to file UCC amendments releasing only the ABL Priority Collateral subject to such Disposition,

(iii) the Term Loan Claimholders shall be deemed to have consented under the Term Loan Documents to any such Disposition in connection with an Enforcement Action by the ABL Agent or an ABL Default Disposition to the same extent as the consent of the ABL Claimholders, and

(iv) in accordance with the provisions of applicable law, the Liens of Term Loan Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition until used to repay ABL Debt.

(j) To the extent that the Liens of ABL Agent in and to any Term Loan Priority Collateral are to be released as provided in this Section 5.1,

(i) ABL Agent shall promptly, upon the written request of Term Loan Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as Term Loan Agent may reasonably require in connection with such Disposition to evidence and effectuate such release; provided, that any such release or UCC amendment by ABL Agent shall not extend to or otherwise affect any of the rights, if any, of ABL Agent to the proceeds from any such Disposition of any Collateral,

(ii) from and after the time that the Liens of the ABL Agent in and to such ABL Priority Collateral are released, ABL Agent shall be automatically and irrevocably deemed to have authorized Term Loan Agent to file UCC amendments releasing only the Term Loan Priority Collateral subject to such Disposition,

(iii) ABL Agent shall be deemed to have consented under the ABL Documents to any such Disposition in connection with an Enforcement Action by the Term Loan Agent or a Term Loan Default Disposition to the same extent as the consent of the Term Loan Claimholders, and

(iv) in accordance with the provisions of applicable law, the Liens of ABL Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition until used to repay Term Loan Debt.



(k) Until the Payment in Full of ABL Priority Debt occurs, Term Loan Agent hereby irrevocably constitutes and appoints ABL Agent and any officer or agent of ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Term Loan Agent or in ABL Agent's own name, from time to time in ABL Agent's discretion, solely for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the ABL Priority Collateral for such purpose and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC3) or any other endorsements or other instruments of transfer or release with respect to the relevant ABL Priority Collateral required for such purpose.

(l) Until the Payment in Full of Term Loan Priority Debt occurs, ABL Agent hereby irrevocably constitutes and appoints Term Loan Agent and any officer or agent of Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of ABL Agent or such holder or in Term Loan Agent's own name, from time to time in Term Loan Agent's discretion, solely for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the Term Loan Priority Collateral for such purpose and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC3) or any other endorsements or other instruments of transfer or release with respect to the relevant Term Loan Priority Collateral required for such purpose.

(m) Until the Payment in Full of ABL Priority Debt occurs, to the extent that the ABL Claimholders (i) have released any Lien on ABL Priority Collateral or any Grantor with respect to the ABL Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the ABL Debt, then Term Loan Agent shall be entitled to obtain a Lien on any such ABL Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the Term Loan Debt, as the case may be.

(n) Until the Payment in Full of Term Loan Priority Debt occurs, to the extent that the Term Loan Claimholders (i) have released any Lien on Term Loan Priority Collateral or any Grantor with respect to the Term Loan Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the Term Loan Debt, then ABL Agent shall be entitled to obtain a Lien on any such Term Loan Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the ABL Debt, as the case may be.

## 5.2 Insurance.

(a) Unless and until the Payment in Full of ABL Priority Debt has occurred:

(i) ABL Agent shall have the sole and exclusive right, subject to the rights of Grantors under the ABL Documents, to adjust and settle any claim under any insurance policy in respect of the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the ABL

Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the terms of the Financing Orders and the rights of Grantors under the ABL Documents and the Term Loan Documents, first to ABL Agent and Term Loan Agent in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any of the Term Loan Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(a), it shall pay such proceeds over to ABL Agent in accordance with the terms of Section 4.2.

(b) Unless and until the Payment in Full of Term Loan Priority Debt has occurred: (i) the Term Loan Claimholders shall have the sole and exclusive right, subject to the rights of Grantors under the Term Loan Documents, to adjust and settle any claim under any insurance policy in respect of the Term Loan Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Term Loan Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the terms of the Financing Orders and the rights of Grantors under the Term Loan Documents and the ABL Documents, first to the Term Loan Claimholders and the ABL Claimholders in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any of the ABL Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(b), it shall pay such proceeds over to Term Loan Agent in accordance with the terms of Section 4.2.

(c) In the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, ABL Agent and Term Loan Agent will work jointly and in good faith to collect, adjust or settle (subject to the rights of the Grantors under the ABL Documents and the Term Loan Documents) any claim under the relevant insurance policy.

(d) Notwithstanding anything contained in this Agreement to the contrary, in the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, then, solely for the purposes of this Agreement, the allocation of proceeds of such insurance policy with respect to Accounts and Inventory shall be allocated to the ABL Priority Collateral in an amount equal to the sum of (A) the face amount of such Accounts constituting ABL Priority Collateral that at any time had been included in the Stated Borrowing Base and (B) the book value determined in accordance with GAAP, but not less than cost, of such Inventory that at any time had been included in the Stated Borrowing Base, determined as of the date of such loss.

(e) To effectuate the foregoing, Grantors shall provide ABL Agent and Term Loan Agent with separate lender's loss payable endorsements naming themselves as loss payee and additional insured, as their interests may appear, with respect to policies which insure Collateral hereunder.

5.3 Amendments; Refinancings; Legend.

(a) The ABL Documents may be amended, supplemented, or otherwise modified in accordance with their terms and the ABL Debt may be Refinanced, in each case without notice to, or the consent of, the Term Loan Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to Term Loan Agent) to the terms of this Agreement; provided further, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of Term Loan Agent (which it shall be authorized to consent to based upon an affirmative vote of the Term Loan Claimholders holding no more than a majority of the debt under the Term Loan DIP Credit Agreement):

- (i) contravene the provisions of this Agreement;
- (ii) increase the "Applicable Margin" or similar component of the interest rate by more than 3.00 percentage points per annum (excluding increases resulting from (A) increases in the underlying reference rate not caused by an amendment, supplement, modification or Refinancing of the ABL DIP Credit Agreement, (B) the application of the pricing grid set forth in the ABL DIP Credit Agreement, or (C) the accrual of interest at the default rate);
- (iii) except as set forth in the Financing Orders, subordinate payment of the ABL Debt (or any Refinancing thereof) to the prior payment of any other "Debt" (as defined in the Term Loan DIP Credit Agreement) other than other ABL Priority Debt;
- (iv) modify the mandatory prepayment provisions of the ABL DIP Credit Agreement or any ABL Document in a manner that restricts the amount of permitted mandatory prepayments in respect of the Term Loan Debt;
- (v) impose or make more onerous on any Grantor redemption, mandatory prepayment, or defeasance provisions thereof (other than in connection with the waiver, amendment or forbearance with respect to an ABL Default); or
- (vi) modify the definition of "Borrowing Base" or any term used as a defined term within such definition in a manner to make more credit available to the Grantors; and
- (vii) change any representations, warranties, covenants, defaults, or events of default under the ABL DIP Credit Agreement or any other ABL Document (including the addition of representations, warranties, covenants, defaults, or events of default not contained in the ABL DIP Credit Agreement or other ABL Documents as in effect on the date hereof) to restrict any Grantor from making payments of the Term Loan Debt that would otherwise be permitted under this Agreement or under the ABL Documents as in effect on the date hereof.

(b) The Term Loan Documents may be amended, supplemented, or otherwise modified in accordance with their terms and the Term Loan Debt may be Refinanced, in each

case without notice to, or the consent of, any of the ABL Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to ABL Agent) to the terms of this Agreement; provided further, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of ABL Agent (which it shall be authorized to consent to based upon an affirmative vote of the ABL Claimholders holding no more than a majority of the debt under the ABL DIP Credit Agreement):

- (i) contravene the provisions of this Agreement;
  - (ii) increase the "Applicable Margin" or similar component of the cash pay portion of any interest rate by more than 3.00 percentage points per annum (excluding increases resulting from the accrual of interest at the default rate);
  - (iii) subordinate payment of the Term Loan Debt to the prior payment of any other indebtedness other than (A) other Term Loan Debt and (B) any Term Loan DIP Financing;
  - (iv) modify the mandatory prepayment provisions of the Term Loan DIP Credit Agreement or any Term Loan Document in a manner that restricts the amount of permitted mandatory prepayments in respect of the ABL Priority Debt;
  - (v) change the redemption, mandatory prepayment, or defeasance provisions thereof (other than in connection with the waiver, amendment or forbearance with respect to an Term Loan Default); or
  - (vi) change any representations, warranties, covenants, defaults, or events of default under the Term Loan DIP Credit Agreement or any other Term Loan Document (including the addition of representations, warranties, covenants, defaults, or events of default not contained in the Term Loan DIP Credit Agreement or other Term Loan Documents as in effect on the date hereof) to restrict any Grantor from making payments of the ABL Debt that would otherwise be permitted under the Term Loan Documents as in effect on the date hereof.
- (c) Borrowers agree that any promissory note evidencing the ABL Debt shall at all times include the following language (or language to similar effect approved by Term Loan Agent):

"Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of \_\_\_\_\_, 2013 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Capital Finance, LLC, as ABL Agent, and Bayside Finance, LLC, as Term Loan Agent. In the event of any conflict between the terms of the Intercreditor

Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

(d) Borrowers agree that any promissory note evidencing the Term Loan Debt shall at all times include the following language (or language to similar effect approved by ABL Agent):

"Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of \_\_\_\_\_, 2013 (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Capital Finance, LLC, as ABL Agent, and Bayside Finance, LLC, as Term Loan Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

#### 5.4 Bailee for Perfection.

(a) ABL Agent and Term Loan Agent each agree to hold that part of the Collateral that is in its possession (or in the possession of its agents or bailees), to the extent that possession is necessary to perfect a Lien thereon under the UCC or other applicable law (such possessory Collateral being referred to as the "**Pledged Collateral**"), as gratuitous bailee and as a non-fiduciary representative and agent for perfection for Term Loan Agent or ABL Agent, as applicable, solely for the purpose of perfecting the security interest granted under the Term Loan Documents or the ABL Documents, as applicable, subject to the terms and conditions of this Section 5.4. Term Loan Agent hereby appoints ABL Agent as its gratuitous bailee and non-fiduciary representative and agent for perfection for the purposes of perfecting their security interest in all Pledged Collateral in which ABL Agent has a perfected security interest under the UCC. ABL Agent hereby appoints Term Loan Agent as its gratuitous bailee and non-fiduciary representative and agent for perfection for the purposes of perfecting their security interest in all Pledged Collateral in which Term Loan Agent has a perfected security interest under the UCC. Each of ABL Agent and Term Loan Agent hereby accept such appointments pursuant to this Section 5.4. Unless and until the Payment in Full of ABL Priority Debt and payment in full in cash of all Excess ABL Debt, Term Loan Agent agrees to promptly notify ABL Agent of any Pledged Collateral constituting ABL Priority Collateral held by it or by any other Term Loan Claimholder, and, immediately upon the request of ABL Agent at any time prior to the Payment in Full of ABL Priority Debt and, except as set forth below, payment in full in cash of the Excess ABL Debt, Term Loan Agent agrees to deliver to ABL Agent any such Pledged Collateral held by it or by any other Term Loan Claimholder, together with any necessary endorsements (or otherwise allow ABL Agent to obtain possession of such Pledged Collateral). Unless and until the Payment in Full of Term Loan Priority Debt, ABL Agent agrees to promptly notify Term Loan Agent of any Pledged Collateral constituting Term Loan Priority Collateral held by it or by any other ABL Claimholder, and, immediately upon the request of Term Loan Agent at any time prior to the Payment in Full of Term Loan Priority Debt, ABL Agent agrees to deliver to Term Loan Agent any such Pledged Collateral held by it or by any other ABL Claimholder, together

with any necessary endorsements (or otherwise allow Term Loan Agent to obtain possession of such Pledged Collateral). Notwithstanding the foregoing, (i) at such time as Payment in Full of ABL Priority Debt has occurred, Term Loan Agent shall have the right, by notice to the ABL Agent, to require the ABL Agent to deliver to Term Loan Agent any such Pledged Collateral held by it or by any other ABL Claimholder, together with any necessary endorsements (or otherwise allow Term Loan Agent to obtain possession of such Pledged Collateral), notwithstanding the existence of Excess ABL Debt, and (ii) at such time as Payment in Full of Term Loan Priority Debt has occurred, ABL Agent shall have the right, by notice to the Term Loan Agent, to require the Term Loan Agent to deliver to ABL Agent any such Pledged Collateral held by it or by any other Term Loan Claimholder, together with any necessary endorsements (or otherwise allow ABL Agent to obtain possession of such Pledged Collateral).

(b) ABL Agent shall have no obligation whatsoever to any of the Term Loan Claimholders to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. Term Loan Agent shall have no obligation whatsoever to any of the ABL Claimholders to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The duties or responsibilities of ABL Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee and non-fiduciary representative and agent for perfection in accordance with this Section 5.4 and delivering any Pledged Collateral in its possession (or in the possession of its agents or bailees) upon a Payment in Full of ABL Priority Debt as provided in Section 5.6. The duties or responsibilities of Term Loan Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee and non-fiduciary representative and agent for perfection in accordance with this Section 5.4 and delivering any Pledged Collateral in its possession (or in the possession of its agents or bailees) as provided in Section 5.6.

(c) ABL Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the Term Loan Claimholders. Term Loan Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the ABL Claimholders.

#### 5.5 When Payment in Full of ABL Priority Debt or Payment in Full of Term Loan Priority Debt Deemed to Not Have Occurred.

(a) If any Borrower enters into any Refinancing of the ABL Priority Debt that is intended to be secured by the ABL Priority Collateral on a first priority basis, then a Payment in Full of ABL Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such ABL Debt shall be treated as ABL Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and ABL Agent under the ABL Documents effecting such Refinancing shall be ABL Agent for all purposes of this Agreement. ABL Agent under such ABL Documents shall agree (in a writing addressed to Term Loan Agent) to be bound by the terms of this Agreement and Term Loan Agent agrees to acknowledge and accept such writing.

(b) If any Borrower enters into any Refinancing of the Term Loan Priority Debt that is intended to be secured by the Term Loan Priority Collateral on a first priority basis, then a Payment in Full of Term Loan Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such Term Loan Debt shall be treated as Term Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and Term Loan Agent under the Term Loan Documents effecting such Refinancing shall be Term Loan Agent for all purposes of this Agreement. Term Loan Agent under such Term Loan Documents shall agree (in a writing addressed to ABL Agent) to be bound by the terms of this Agreement and ABL Agent agrees to acknowledge and accept such writing.

#### 5.6 Transfer of Pledged Collateral; Other Actions.

(a) ABL Agent hereby agrees that upon the Payment in Full of the ABL Debt, to the extent permitted by applicable law, upon the written request of Term Loan Agent (with all costs and expenses in connection therewith to be for the account of Term Loan Agent and to be paid by Grantors):

(i) ABL Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Pledged Collateral, if any, then in its possession to Term Loan Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the ABL Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the ABL Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law; and

(ii) in connection with the terms of any collateral access agreement, whether with a landlord, processor, warehouseman, or other third party or any control agreement, at such time as no ABL Debt is outstanding, ABL Agent shall notify the other parties thereto that it no longer has rights as secured party thereunder, and if Payment in Full of the ABL Priority Debt has occurred and Excess ABL Debt remains outstanding, notify the other parties thereto that the Term Loan Agent has priority rights thereunder.

(b) Term Loan Agent hereby agrees that upon the Payment in Full of the Term Loan Priority Debt, to the extent permitted by applicable law, upon the written request of ABL Agent (with all costs and expenses in connection therewith to be for the account of ABL Agent and to be paid by Grantors):

(i) Term Loan Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Pledged Collateral, if any, then in its possession to ABL Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the Term Loan Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the Term Loan Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law; and

(ii) in connection with the terms of any collateral access agreement, whether with a landlord, processor, warehouseman, or other third party or any control agreement, at such time as no Term Loan Priority Debt is outstanding, Term Loan Agent shall notify the other parties thereto that it no longer has rights as secured party.

(c) The foregoing provisions shall not impose on any of the ABL Claimholders or any of the Term Loan Claimholders any obligations that would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or other governmental authority or any applicable law or give rise to risk of legal liability.

## **SECTION 6. Insolvency Proceedings.**

6.1 Enforceability and Continuing Priority. This Agreement shall be applicable both before and after the commencement of any Insolvency Proceeding and all converted or succeeding cases in respect thereof. The relative rights of the Claimholders in or to any distributions from or in respect of any Collateral, or proceeds of Collateral, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code.

### **6.2 Financing.**

(a) Until the Payment in Full of ABL Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if ABL Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code (or similar Bankruptcy Law)) constituting ABL Priority Collateral (herein, "**ABL Cash Collateral**"), or consents to such Grantor obtaining financing (or additional financing), whether from any of the ABL Claimholders or any other Person, provided under Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law secured by a Lien on such ABL Priority Collateral (such financing, an "**ABL DIP Financing**"), and if such ABL Cash Collateral use or ABL DIP Financing, as applicable, meets the applicable ABL DIP Financing Conditions, then Term Loan Agent unconditionally agrees that it will consent to such ABL Cash Collateral use and will raise no objection to such ABL DIP Financing, as applicable, and, if ABL DIP Financing is involved, Term Loan Agent will subordinate its Liens in the ABL Priority Collateral (and in any other assets (other than Term Loan Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such ABL DIP Financing) to the Liens securing such ABL DIP Financing. If such ABL Cash Collateral use or ABL DIP Financing, as applicable, does not meet all of the applicable ABL Financing Conditions then the Term Loan Agent may withhold its consent to, and object to, such ABL Cash Collateral use and/or any such ABL DIP Financing. Term Loan Agent agrees that it shall not, and nor shall any of the Term Loan Claimholders, directly or indirectly (including by or through an affiliate), provide, offer to provide, or support any ABL DIP Financing secured by a Lien on the ABL Priority Collateral senior to or pari passu with the Liens securing the ABL Debt. If, in connection with any ABL Cash Collateral use or ABL DIP Financing, any Liens on the ABL Priority Collateral held by the ABL Claimholders to secure the ABL Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the ABL Priority Collateral of the



Term Loan Claimholders securing the Term Loan Priority Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the ABL Priority Collateral of the ABL Claimholders consistent with this Agreement.

(b) Until the Payment in Full of Term Loan Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if Term Loan Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code (or similar Bankruptcy Law)) constituting Term Loan Priority Collateral (herein, "**Term Loan Cash Collateral**"), or consents to such Grantor to obtaining financing (or additional financing), whether from the Term Loan Claimholders or any other Person, provided under Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law secured by a Lien on such Term Loan Priority Collateral (such financing, a "**Term Loan DIP Financing**"), and if such Term Loan Cash Collateral use or Term Loan DIP Financing, as applicable, meets the applicable Term Loan DIP Financing Conditions, then ABL Agent unconditionally agrees that it will consent to such Term Loan Cash Collateral use and will raise no objection to such Term Loan DIP Financing, as applicable, and, if Term Loan DIP Financing is involved, ABL Agent will subordinate its Liens in the Term Loan Priority Collateral (and in any other assets (other than ABL Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such Term Loan DIP Financing) to the Liens securing such Term Loan DIP Financing. If such Term Loan Cash Collateral use or Term Loan DIP Financing, as applicable, does not meet all of the applicable Term Loan Financing Conditions, then the ABL Agent may withhold its consent to, and object to, such Term Loan Cash Collateral use and/or any such Term Loan DIP Financing. ABL Agent agrees that it shall not, and nor shall any of the ABL Claimholders, directly or indirectly (including by or through an affiliate), provide, offer to provide, or support any Term Loan DIP Financing secured by a Lien on the Term Loan Priority Collateral that is senior to or pari passu with the Liens securing the Term Loan Priority Debt. If, in connection with any Term Loan Cash Collateral use or Term Loan DIP Financing, any Liens on the Term Loan Priority Collateral held by the Term Loan Claimholders to secure the Term Loan Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the Term Loan Priority Collateral of the ABL Claimholders securing the ABL Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the Term Loan Priority Collateral of the Term Loan Claimholders consistent with this Agreement.

(c) All Liens granted to ABL Agent or Term Loan Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the parties to be and shall be deemed to be subject to the Lien priorities in Section 2.1 and the other terms and conditions of this Agreement. Notwithstanding the foregoing, the priority of Liens, if any, on Avoidance Actions that are neither ABL Priority Collateral nor Term Loan Priority Collateral or other Liens granted under Bankruptcy Code § 364(c)(2), and administrative priority claims arising under Bankruptcy Code § 364(c), in each case granted with respect to the ABL DIP Financing and Term Loan DIP Financing, shall be allocated as follows:

(i) *first*, on a ratable basis, to repayment of the principal amount of the ABL Debt under the ABL DIP Credit Agreement in excess of the principal amount of ABL Debt (as defined under the Existing Intercreditor Agreement) as of the Filing Date and the principal amount of Term Loan Debt under the Term Loan DIP Credit Agreement

in excess of the principal amount of the Term Loan Debt (as defined in the Existing Intercreditor Agreement) as of the Filing Date;

(ii) *second*, on a ratable basis, to the portions of the ABL Debt and Term Loan Debt that would have shared on a ratable basis pursuant to Section 6.5(d)(ii) of the Existing Intercreditor Agreement had the ABL Debt under the ABL Credit Agreement not been Refinanced with proceeds of the ABL DIP Financing and the Term Loan Debt under the Term Loan Credit Agreement not been Refinanced with proceeds of the Term Loan DIP Financing; and

(iii) *third*, on a ratable basis, to the portions of the ABL Debt and Term Loan Debt that would have shared on a ratable basis pursuant to Section 6.5(d)(iii) of the Existing Intercreditor Agreement had the ABL Debt under the ABL Credit Agreement not been Refinanced with proceeds of the ABL DIP Financing and the Term Loan Debt under the Term Loan Credit Agreement not been Refinanced with proceeds of the Term Loan DIP Financing.

6.3 Sales. Each Junior Agent agrees that it will consent to, and will not object or oppose, or support, directly or indirectly, any other person seeking to object or oppose, a motion by a Grantor that is supported by the Priority Agent to Dispose of any of its Priority Collateral free and clear of the Liens of the Junior Agent under Section 363 or 1129 of the Bankruptcy Code if (a) the Priority Agent has consented to the sale of such Collateral free and clear of the Liens of the Priority Agent, (b) such motion does not impair, subject to the priorities set forth in this Agreement, the rights of the Junior Claimholders under Section 363(k) of the Bankruptcy Code (so long as the right of the Junior Claimholders to offset their claims against the purchase price only arises after the Priority Debt has been paid in full in cash), and (c) either (i) pursuant to court order, the Liens of the Junior Agent attach to the net proceeds of the Disposition with the same priority and validity as the Liens held by such Junior Agent on such Priority Collateral, and the Liens remain subject to the terms of this Agreement, or (ii) the proceeds of the Disposition are applied in accordance with Section 4.1. The foregoing notwithstanding, the Junior Claimholders may oppose or raise any objections to such Disposition of such Priority Collateral that could be raised by a creditor of Grantors whose claims are not secured by Liens on such Priority Collateral (including an opposition or objection to the proposed bidding procedures), provided that such opposition or objections are not inconsistent with any other term or provision of this Agreement and are not based on their status as secured creditors (without limiting the foregoing, the Junior Claimholders may not oppose or raise any objections based on rights afforded by Sections 363(e) and (f) of the Bankruptcy Code to secured creditors (or any comparable provision of any other Bankruptcy Law) with respect to the Liens granted to the Junior Agent in respect of such assets).

6.4 Relief from the Automatic Stay. Until the Payment in Full of Priority Debt has occurred, Junior Agent agrees not to (a) seek (or support any other person seeking) relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral, without the prior written consent of Priority Agent; provided, that Junior Agent may seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of such Priority Collateral if and to the extent that Priority Agent has obtained relief from or modification of such stay in respect of the Priority Collateral, or (b) oppose any request by the

Priority Agent or any Priority Claimholder to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral.

6.5 [Intentionally Omitted.]

6.6 [Intentionally Omitted.]

6.7 No Waiver; Limitation.

(a) Subject to Sections 3.1(a), 3.2(a), and the other provisions of this Section 6, nothing contained herein shall prohibit or in any way limit any Agent or any other Claimholder from objecting in any Insolvency Proceeding involving a Grantor to any action taken by the other Agent or any other Claimholder, including the seeking by the other Agent or any other Claimholder of adequate protection or the assertion by the other Agent or any other Claimholder of any of its rights and remedies under the Term Loan Documents or the ABL Documents, as applicable.

6.8 Avoidance Issues. If any Claimholder is required in any Insolvency Proceeding or otherwise to turn over, disgorge, or otherwise pay to the estate of any Grantor any amount paid in respect of the Debt of such Claimholder (or if any Claimholder elects to do so upon the advice of counsel) (a "**Recovery**"), then such Claimholder shall be entitled to a reinstatement of the applicable Debt with respect to all such amounts, and all rights, interests, priorities, and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.9 Plan of Reorganization.

(a) [Intentionally Omitted.]

(b) The provisions of Section 1129(b)(1) of the Bankruptcy Code notwithstanding, the Claimholders agree that they will not propose, support, or vote in favor of any plan of reorganization of a Grantor that is inconsistent with the Lien priorities of this Agreement or the Financing Orders.

(c) If, in connection with an Insolvency Proceeding involving a Grantor, the Term Loan Claimholders receive any cash, debt, or equity securities on account of their Term Loan Secured Claims in respect of their interest in the ABL Priority Collateral, the Term Loan Agent or the other Term Loan Claimholders, as applicable, shall turnover such cash, claims, or securities to ABL Agent for application in accordance with Section 4.1. Term Loan Agent irrevocably authorizes and empowers ABL Agent, in the name of each Term Loan Claimholder, to demand, sue for, collect, and receive any and all such distributions on account of any Term Loan Secured Claim in respect of such Term Loan Claimholder's interest in the ABL Priority Collateral to which the ABL Claimholders are entitled hereunder.

(d) If, in connection with an Insolvency Proceeding involving a Grantor, the ABL Claimholders receive any cash, debt, or equity securities on account of their ABL Secured

Claims in respect of their interest in the Term Loan Priority Collateral, the ABL Agent or the other ABL Claimholders, as applicable, shall turnover such cash, claims, or securities to Term Loan Agent for application in accordance with Section 4.1. ABL Agent irrevocably authorizes and empowers Term Loan Agent, in the name of each ABL Claimholder, to demand, sue for, collect, and receive any and all such distributions on account of any ABL Secured Claim in respect of such ABL Claimholder's interest in the Term Loan Priority Collateral to which the Term Loan Claimholders are entitled hereunder.

## **SECTION 7. Reliance; Waivers; Etc.**

7.1 Reliance. Other than any reliance on the terms of this Agreement, ABL Agent acknowledges that it and each of the other ABL Claimholders have, independently and without reliance on any of the Term Loan Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the ABL Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Documents or this Agreement. Other than any reliance on the terms of this Agreement, Term Loan Agent acknowledges that it and each of the other Term Loan Claimholders have, independently and without reliance on any of the ABL Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

7.2 No Warranties or Liability. ABL Agent acknowledges and agrees that none of the Term Loan Claimholders have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the Term Loan Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Term Loan Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Term Loan Agent acknowledges and agrees that none of the ABL Claimholders has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the ABL Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the ABL Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Term Loan Claimholders shall have no duty to the ABL Claimholders, and the ABL Claimholders shall have no duty to the Term Loan Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the ABL Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

## **7.3 No Waiver of Lien Priorities**

(a) No right of any of the Claimholders, any Agent or any of them to enforce any provision of this Agreement or any Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any other Claimholder or any Agent, or by any noncompliance by any person with the terms, provisions, and covenants of this Agreement, any of the Loan Documents, regardless of any knowledge thereof which any Agent or any other Claimholder may have (or be otherwise charged with).

(b) Without in any way limiting the generality of the foregoing provisions of Section 7.3(a) (but subject to any rights of Grantors under the ABL Documents and subject to the provisions of Section 5.3(a)), the ABL Claimholders may, at any time and from time to time in accordance with the ABL Documents or applicable law or any applicable provisions of this Agreement, without the consent of, or notice to, any of the Term Loan Claimholders, without incurring any liabilities to any of the Term Loan Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the Term Loan Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of Term Loan Agent:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the ABL Debt or any Lien on any ABL Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by any of the ABL Claimholders, the ABL Debt, or any of the ABL Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order all or any part of the ABL Priority Collateral or any liability of any Grantor to any of the ABL Claimholders, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any ABL Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any ABL Priority Collateral and any guarantor or any liability of any Grantor to any of the ABL Claimholders or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, Term Loan Agent also agrees that the ABL Claimholders shall have no liability to any of the Term Loan Claimholders, and Term Loan Agent hereby waives any claim of the Term Loan Claimholders against any of the ABL

Claimholders arising out of any and all actions which any of the ABL Claimholders may, pursuant to the terms hereof, take, permit, or omit to take with respect to:

- (i) the ABL Documents;
- (ii) the collection of the ABL Debt; or
- (iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any ABL Priority Collateral.

Term Loan Agent agrees that the ABL Claimholders have no duty to the Term Loan Claimholders in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Debt, or otherwise.

(d) Without in any way limiting the generality of the provisions of Section 7.3(a) (but subject to any rights of Grantors under the Term Loan Documents and subject to the provisions of Section 5.3(b)) the Term Loan Claimholders may, at any time and from time to time in accordance with the Term Loan Documents or applicable law, without the consent of, or notice to, any of the ABL Claimholders, without incurring any liabilities to any of the ABL Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the ABL Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of ABL Agent:

- (i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the Term Loan Debt or any Lien on any Term Loan Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Loan Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by the Term Loan Claimholders, the Term Loan Debt, or any of the Term Loan Documents;

- (ii) subject to Section 3.9, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Term Loan Priority Collateral or any liability of any Grantor to any Term Loan Claimholder, or any liability incurred directly or indirectly in respect thereof;

- (iii) settle or compromise any Term Loan Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof; and

- (iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any Term Loan Priority Collateral and any guarantor or any liability of any Grantor to any Term Loan Claimholder or any liability incurred directly or indirectly in respect thereof.

(e) Except as otherwise provided herein, ABL Agent also agrees that the Term Loan Claimholders shall have no liability to any of the ABL Claimholders, and ABL Agent hereby waives any claim of the ABL Claimholders against any of the Term Loan Claimholders arising out of any and all actions which any of the Term Loan Claimholders may, pursuant to the terms hereof, take, permit or omit to take with respect to:

- (i) the Term Loan Documents;
- (ii) the collection of the Term Loan Debt; or
- (iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any Term Loan Priority Collateral.

ABL Agent agrees that the Term Loan Claimholders have no duty to the ABL Claimholders in respect of the maintenance or preservation of the Term Loan Priority Collateral, the Term Loan Debt, or otherwise.

(f) Until the Payment in Full of ABL Priority Debt and the Payment in Full of Term Loan Priority Debt, each of Term Loan Agent and ABL Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead, or otherwise assert, or otherwise claim the benefit of, any marshaling, appraisal, valuation, or other similar right that may otherwise be available under applicable law with respect to the other Agent's Priority Collateral or any other similar rights a junior secured creditor may have under applicable law, except in the case of valuation or appraisal, as may be required in connection with compliance with the provisions of this Agreement.

7.4 Obligations Unconditional. For so long as this Agreement is in full force and effect, all rights, interests, agreements, and obligations of the ABL Claimholders and the Term Loan Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) Subject to Sections 2.1 and 2.2 and as otherwise expressly provided herein, any lack of validity or enforceability of any ABL Documents or any Term Loan Documents;

(b) except as otherwise expressly restricted in this Agreement, any change in the time, manner, or place of payment of, or in any other terms of, all or any of the ABL Debt or Term Loan Debt, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Document or any Term Loan Document;

(c) except as otherwise expressly restricted in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Debt or Term Loan Debt or any guarantee thereof;

(d) the commencement of any Insolvency Proceeding in respect of any Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to any Grantor in respect of the ABL Debt or the Term Loan Debt.

## **SECTION 8. Representations and Warranties.**

8.1 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

(c) The execution, delivery, and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any indenture, agreement or other instrument binding upon such party.

8.2 Representations and Warranties of Each Agent. ABL Agent and Term Loan Agent each represents and warrants to the other that it has been authorized by the ABL Claimholders or the Term Loan Claimholders, as applicable, under the ABL DIP Credit Agreement or the Term Loan DIP Credit Agreement, as applicable, to enter into this Agreement and that each of the agreements, covenants, waivers, and other provisions hereof is valid, binding, and enforceable against the ABL Lenders or Term Loan Lenders, as applicable, as fully as if they were parties hereto.

8.3 Survival. All representations and warranties made by one party hereto in this Agreement shall be considered to have been relied upon by the other party hereto and shall survive the execution and delivery of this Agreement, regardless of any investigation made by any such other party.

## **SECTION 9. Miscellaneous.**

### **9.1 Conflicts.**

(a) In the event of any conflict between the provisions of this Agreement and the provisions of any of the ABL Documents or any of the Term Loan Documents, the provisions of this Agreement shall govern and control.

(b) In the event of any conflict between the provisions of this Agreement and the provisions of the Existing Intercreditor Agreement as such provisions relate solely to the ABL Debt or Term Loan Debt, the provisions of this Agreement shall govern and control, except that any Section that is intentionally omitted from Section 6 of this Agreement shall be governed and controlled by the Existing Intercreditor Agreement other than with respect to ABL Debt



evidenced by the ABL DIP Credit Agreement and Term Loan Debt evidenced by the Term Loan DIP Credit Agreement. In furtherance of the foregoing, the definition of "ABL Cap" under the Existing Intercreditor Agreement shall be deemed to be superseded by and replaced with the definition of ABL Cap under this Agreement.

(c) For the avoidance of doubt, to the extent any of the Remaining Prepetition ABL Debt and/or the Remaining Prepetition Term Loan Debt remains outstanding at any time during the term of this Agreement, the lien priorities among the Remaining Prepetition ABL Debt (if any), the Remaining Prepetition Term Loan Debt (if any), the ABL Debt (if any) and the Term Loan Debt (if any) shall be governed by the Existing Intercreditor Agreement.

9.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the ABL Claimholders may continue, at any time and without notice to any Term Loan Claimholder, to extend credit and other financial accommodations to or for the benefit of any Grantor constituting ABL Debt in reliance hereof. Each Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for such Grantor in any Insolvency Proceeding. Subject to the terms of this Agreement that provide for reinstatement of Debt, this Agreement shall terminate and be of no further force and effect:

(a) with respect to the ABL Claimholders and the ABL Debt, on the date that the ABL Debt is paid in U.S. Dollars in full in cash or immediately available funds and all commitments, if any, to extend credit to Borrowers are terminated or have expired; and

(b) with respect to the Term Loan Claimholders and the Term Loan Debt, on the date that the Term Loan Debt is paid in U.S. Dollars in full in cash or immediately available funds and all commitments, if any, to extend credit to Borrowers are terminated or have expired.

9.3 Amendments; Waivers. No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

9.4 Information Concerning Financial Condition of the Borrowers and their Subsidiaries. The ABL Claimholders, on the one hand, and the Term Loan Claimholders, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of each of the Borrowers and their respective Subsidiaries and all endorsers or guarantors of the ABL Debt or the Term Loan Debt and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Debt or the Term Loan Debt. The ABL Claimholders shall

have no duty to advise the Term Loan Claimholders of information known to them regarding such condition or any such circumstances or otherwise. The Term Loan Claimholders shall have no duty to advise the ABL Claimholders of information known to them regarding such condition or any such circumstances or otherwise. In the event any of the ABL Claimholders or any of the Term Loan Claimholders, in its sole discretion, undertakes at any time or from time to time to provide any such information to any other party to this Agreement, it shall be under no obligation:

(a) to make nor shall it be deemed to have made, and the ABL Claimholders and the Term Loan Claimholders, as the case may be, shall not be under any obligation to make nor shall they be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness, or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.5 Subrogation. (a) With respect to any payments or distributions in cash, property, or other assets that any Term Loan Claimholder pays over to ABL Agent under the terms of this Agreement, such Term Loan Claimholders shall be subrogated to the rights of the ABL Claimholders, and (b) with respect to any payments or distributions in cash, property, or other assets that any ABL Claimholder pays over to Term Loan Agent under the terms of this Agreement, such ABL Claimholders shall be subrogated to the rights of the Term Loan Claimholders; provided, that (x) the Term Loan Claimholders shall not assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of all ABL Priority Debt has occurred, and (y) the ABL Claimholders hereby agree not to assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of all Term Loan Priority Debt has occurred.

#### 9.6 SUBMISSION TO JURISDICTION; WAIVERS.

(a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:**

(i) **ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION AND VENUE OF SUCH COURTS;**

(ii) **WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;**

(iii) AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.7; AND

(iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

(b) EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE; MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.6(b) AND EXECUTED BY ABL AGENT AND TERM LOAN AGENT), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.7 Notices. All notices permitted or required under this Agreement shall be sent to Term Loan Agent and ABL Agent, as the case may be. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by telefacsimile or United States mail or courier service or electronic mail and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or electronic mail, or 3 Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as may be designated by such party in a written notice to all of the other parties.

9.8 Further Assurances. ABL Agent and Term Loan Agent each agrees to take such further action and shall execute and deliver such additional documents and instruments (in

recordable form, if requested) as ABL Agent or Term Loan Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement, all at the expense of Borrowers. In furtherance of the foregoing, (a) ABL Agent agrees that, if there is a Refinancing of the Term Loan Debt and if the agent or other representative of the holders of the indebtedness that Refinances the Term Loan Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative, and (b) Term Loan Agent agrees that if there is a Refinancing of the ABL Debt and if the agent or other representative of the holders of the indebtedness that Refinances the ABL Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative.

**9.9 APPLICABLE LAW. THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES THAT THIS AGREEMENT RELATES TO A TRANSACTION COVERING IN THE AGGREGATE NOT LESS THAN \$250,000.**

9.10 Binding on Successors and Assigns. This Agreement shall be binding upon ABL Agent, the ABL Claimholders, Term Loan Agent, the Term Loan Claimholders, and their respective successors and assigns.

9.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

9.12 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or PDF or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.13 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of the ABL Claimholders and the Term Loan Claimholders. In no event shall any Grantor be a third party beneficiary of this Agreement.

9.14 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Claimholders, on the one hand, and the Term Loan Claimholders on the other hand. No Grantor

or any other creditor thereof shall have any rights hereunder and no Grantor may rely on the terms hereof. Nothing in this Agreement shall impair, as between Grantors and the ABL Claimholders, or as between Grantors and the Term Loan Claimholders, the obligations of Grantors to pay principal, interest, fees and other amounts as provided in the ABL Documents and the Term Loan Documents, respectively. Nothing in this Agreement shall create vary or modify the rights or duties of the ABL Claimholders, *inter se*, under the ABL Documents or the rights or duties of the Term Loan Claimholders, *inter se*, under the Term Loan Documents.

9.15 Costs and Attorneys Fees. In the event it becomes necessary for ABL Agent or Term Loan Agent to commence or become a party to any proceeding or action to enforce the provisions of this Agreement, the court or body before which the same shall be tried shall award to the prevailing party all costs and expenses thereof, including reasonable attorneys fees, the usual and customary and lawfully recoverable court costs, and all other expenses in connection therewith.

9.16 Integration. This Agreement reflects the entire understanding of the parties with respect to the subject matter hereof and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

9.17 Reciprocal Rights. The parties agree that the provisions of Sections 2.3, 2.4(b), 3, 4.2, 5.1, 5.2, 6.3, 6.4, 6.6, 6.7, and 9.5, including, as applicable, the defined terms referenced therein (but only to the extent used therein), which govern the relationship, and certain rights, restrictions, and agreements, between the ABL Claimholders with respect to the ABL Debt, on the one hand, and the Term Loan Claimholders with respect to the Term Loan Debt, on the other hand, with respect to the ABL Priority Collateral shall, from and after the Payment in Full of ABL Priority Debt and until Payment in Full of the Term Loan Priority Debt, apply to and govern, *mutatis mutandis*, the relationship between the Term Loan Claimholders as Priority Claimholders with respect to the Term Loan Priority Debt, on the one hand, and the ABL Claimholders as Junior Claimholders with respect to the Excess ABL Debt, on the other hand, with respect to the ABL Priority Collateral.

## **SECTION 10. Purchase Option.**

10.1 [Reserved].

### **10.2 Term Claimholder Purchase Option**

(a) Upon the occurrence and during the continuation of a Triggering Event, then, in any such case, any one or more of the Term Loan Claimholders (acting in their individual capacity or through one or more affiliates) shall have the right, but not the obligation (each Term Loan Claimholder having a ratable right to make the purchase, with each Term Loan Claimholder's right to purchase being automatically proportionately increased by the amount not purchased by another Term Loan Claimholder), upon 5 Business Days prior written notice from (or on behalf of) such Term Loan Claimholders (a "**Purchase Notice**") to ABL Agent to acquire from the ABL Claimholders all (but not less than all) of the right, title, and interest of the ABL Claimholders in and to the ABL Priority Debt and the ABL Documents. The Purchase Notice, if given, shall be irrevocable.

(b) On the date specified by Term Loan Agent in the Purchase Notice (which shall not be more than 5 Business Days after the receipt by ABL Agent of the Purchase Notice), the ABL Claimholders shall sell to the purchasing Term Loan Claimholders and the purchasing Term Loan Claimholders shall purchase from the ABL Claimholders, the ABL Priority Debt.

(c) On the date of such purchase and sale, the purchasing Term Loan Claimholders shall

(i) pay to ABL Agent, for the benefit of the ABL Claimholders, as the purchase price therefor, the full amount of all the ABL Priority Debt, other than indemnification obligations for which no claim or demand for payment has been made at such time, and other than ABL Priority Debt cash collateralized in accordance with clause (c)(ii) below) then outstanding and unpaid,

(ii) furnish cash collateral to ABL Agent in such amounts as ABL Agent determines is reasonably necessary to secure ABL Agent and the ABL Claimholders in respect of (A) any issued and outstanding Letters of Credit (but not in any event in an amount greater than 105% (115% in the case of Letters of Credit denominated in a currency other than U.S. Dollars) of the aggregate undrawn amount of such Letters of Credit) (such cash collateral shall be applied to the reimbursement of any drawing under a Letter of Credit as and when such drawing is paid and, if a Letter of Credit expires undrawn, the cash collateral held by ABL Agent in respect of such Letter of Credit shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders) and (B) Bank Product Obligations (such cash collateral shall be applied to the reimbursement of the Bank Product Obligations as and when such obligations become due and payable and, at such time as all of the Bank Product Obligations are paid in full, the remaining cash collateral held by ABL Agent in respect of Bank Product Obligations shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders), and (C) any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages that are the subject of the indemnification provisions of the ABL DIP Credit Agreement (such cash collateral shall be applied to the reimbursement of such obligations as and when they become due and payable and, at such time as all of such obligations are paid in full, the remaining cash collateral held by ABL Agent in respect of indemnification obligations shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders), and

(iii) pay to ABL Agent and the other ABL Claimholders the amount of all expenses to the extent earned or due and payable in accordance with the ABL Documents (including the reimbursement of attorneys' fees, financial examination expenses, and appraisal fees).

(d) Such purchase price and cash collateral shall be remitted by wire transfer of federal funds to such bank account of ABL Agent as ABL Agent may designate in writing to Term Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the purchasing Term Loan Claimholders to the bank account designated by ABL Agent are received in such bank

account prior to 2:00 p.m., New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by the purchasing Term Loan Claimholders to the bank account designated by ABL Agent are received in such bank account later than 2:00 p.m., New York City time.

(e) Anything contained in this paragraph to the contrary notwithstanding, in the event that (i) the purchasing Term Loan Claimholders receive all or a portion of any prepayment premium, make-whole obligation, or early termination fee payable pursuant to the ABL Documents in cash, (ii) all ABL Priority Debt purchased by such purchasing Term Loan Claimholders including principal, interest and fees thereon and costs and expenses of collection thereof (including reasonable attorneys' fees and legal expenses), is repaid in full in cash, and (iii) the ABL DIP Credit Agreement is terminated, in each case, within 180 days following the date on which the purchasing Term Loan Claimholders pay the purchase price described in clauses (c)(i)-(iii) of this Section, then, within 3 Business Days after receipt by such Term Loan Claimholders of such amounts, the purchasing Term Loan Claimholders shall pay a supplemental purchase price to ABL Agent, for the benefit of the ABL Claimholders, in respect of their purchase under this Section in an amount equal to the portion of the prepayment premium, make-whole obligation or early termination fee received by the purchasing Term Loan Claimholders to which the ABL Claimholders would have been entitled to receive had the purchase under this Section not occurred.

(f) Such purchase shall be effected by the execution and delivery of a customary form of assignment and acceptance agreement and shall be expressly made without representation or warranty of any kind by ABL Agent and the other ABL Claimholders as to the ABL Priority Debt so purchased, or otherwise, and without recourse to ABL Agent or any other ABL Claimholder, except that each ABL Claimholder shall represent and warrant: (i) that the amount quoted by such ABL Claimholder as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to the purchasing Term Loan Claimholders, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

(g) In the event that any one or more of the Term Loan Claimholders exercises and consummates the purchase option set forth in this Section, (i) ABL Agent shall have the right, but not the obligation, to immediately resign under the ABL DIP Credit Agreement, and (ii) the purchasing Term Loan Claimholders shall have the right, but not the obligation, to require ABL Agent to immediately resign under the ABL DIP Credit Agreement.

(h) In the event that any one or more of the Term Loan Claimholders exercises and consummates the purchase option set forth in this Section, (i) the ABL Claimholders shall retain their indemnification rights under the ABL DIP Credit Agreement for actions or other matters arising on or prior to the date of such purchase, and (ii) and in the event that, at the time of such purchase, there exists Excess ABL Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess ABL Debt (clauses (i) and (ii), the "**ABL Retained Interest**").

(i) In the event that an ABL Retained Interest exists, each ABL Claimholder shall, at the request of the purchasing Term Loan Claimholders, execute an amendment to the

ABL DIP Credit Agreement acknowledging that such ABL Retained Interest consisting of Excess ABL Debt is a last-out tranche, payable after Payment in Full of all ABL Priority Debt and payment in full of all of the Term Debt. Interest with respect to such ABL Retained Interest consisting of Excess ABL Debt shall continue to accrue and be payable in accordance with the terms of the ABL Documents, the ABL Retained Interest shall continue to be secured by the Collateral, and the ABL Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the ABL DIP Credit Agreement and this Agreement. Each ABL Claimholder shall continue to have all rights and remedies of a lender under the ABL DIP Credit Agreement and the other ABL Documents; provided, that no ABL Claimholder shall have any right to vote on or otherwise consent to any amendment, waiver, departure from, or other modification of any provision of any ABL Document except that the consent of ABL Agent shall be required for (i) those matters that require the agreement of all lenders under the ABL DIP Credit Agreement to reduce interest or principal and (ii) matters in contravention of the provisions and priorities set forth in this Agreement with respect to the ABL Retained Interest.

[signature pages follow]

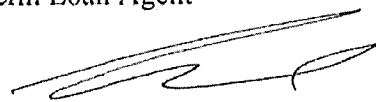


IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**WELLS FARGO CAPITAL FINANCE, LLC,**  
a Delaware limited liability company,  
as ABL Agent

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

**BAYSIDE FINANCE, LLC,**  
a Delaware limited liability company,  
as Term Loan Agent

By:  \_\_\_\_\_  
Name: **Richard Siegel**  
Title: **Authorized Signatory**

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

WELLS FARGO CAPITAL FINANCE, LLC,  
a Delaware limited liability company,  
as ABL Agent

By: Laura Nickas  
Name: LAURA NICKAS  
Title: LLC. PRESIDENT

BAYSIDE FINANCE, LLC,  
a Delaware limited liability company,  
as Term Loan Agent


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

### ACKNOWLEDGMENT

Each Borrower and each of its undersigned Subsidiaries each hereby acknowledge that they have received a copy of the foregoing Intercreditor Agreement (as in effect on the date hereof, the "Initial Intercreditor Agreement") and agree to recognize all rights granted by the Initial Intercreditor Agreement to the ABL Claimholders and the Term Loan Claimholders, waive the provisions of Section 9-615(a) of the UCC in connection with the application of proceeds of Collateral in accordance with the provisions of the Initial Intercreditor Agreement, agree that they will not do any act or perform any obligation which is not in accordance with the agreements set forth in the Initial Intercreditor Agreement. Each Borrower and each of its undersigned Subsidiaries each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the Initial Intercreditor Agreement, as amended, restated, supplemented, or otherwise modified hereafter.

#### **ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:**

**SCHOOL SPECIALTY, INC.,**  
a Wisconsin corporation

By: 

Name:

Title:

**CLASSROOMDIRECT.COM, LLC,**  
a Delaware limited liability company

By: 

Name:

Title:

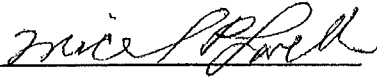
**DELTA EDUCATION, LLC,**  
a Delaware limited liability company

By: 

Name:

Title:

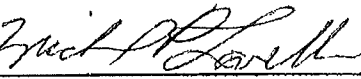
**SPORTIME, LLC,**  
a Delaware limited liability company

By:   
Name:  
Title:

**CHILDCRAFT EDUCATION CORP.,**  
a New York corporation

By:   
Name:  
Title:


**BIRD-IN-HAND WOODWORKS, INC.,**  
a New Jersey corporation

By:   
Name:  
Title:

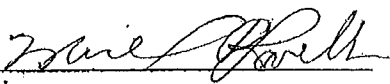
**CALIFONE INTERNATIONAL, INC.,**  
a Delaware corporation

By:   
Name:  
Title:


**PREMIER AGENDAS, INC.,**  
a Washington corporation

By:   
Name:  
Title:

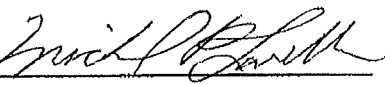
**SELECT AGENDAS, CORP.,**  
a Nova Scotia unlimited company

By:   
Name:  
Title:

**FREY SCIENTIFIC, INC.,**  
a Delaware corporation

By:   
Name:  
Title:

**SAX ARTS & CRAFTS, INC.,**  
a Delaware corporation

By:   
Name:  
Title:

**EXHIBIT D**

**Prepetition Intercreditor Agreement**

## INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (this "Agreement") is dated as of May 22 2012, and entered into by and between **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, in its capacity as agent under the ABL Documents, including its successors and assigns in such capacity from time to time ("**ABL Agent**"), and **BAYSIDE FINANCE, LLC**, a Delaware limited liability company, in its capacity as agent under the Term Loan Documents, including its successors and assigns in such capacity from time to time ("**Term Loan Agent**").

### RECITALS

School Specialty, Inc., a Wisconsin corporation, each of ClassroomDirect.com, LLC, a Delaware limited liability company, Delta Education, LLC, a Delaware limited liability company, Sportime, LLC, a Delaware limited liability company, Childcraft Education Corp., a New York corporation, Bird-in-Hand Woodworks, Inc. a New Jersey corporation, Califone International, Inc. a Delaware corporation, and Premier Agendas, Inc., a Washington corporation (individually, a "**Borrower**" and collectively, "**Borrowers**"), Frey Scientific, Inc., a Delaware corporation, Sax Arts & Crafts, Inc., a Delaware corporation and Select Agendas, Corp., a Nova Scotia unlimited liability company (such Subsidiaries, together with such other Subsidiaries that become guarantors under the ABL Credit Agreement and the Term Loan Credit Agreement, the "**Guarantors**"), the lenders party thereto, and ABL Agent, have entered into that certain Credit Agreement dated as of the date hereof (the "**ABL Credit Agreement**") providing for a revolving credit facility pursuant to which such lenders have or may, from time to time, make loans and provide other financial accommodations to Borrowers. The obligation of Borrowers to repay the ABL Debt under the ABL Credit Agreement is guaranteed by the Guarantors;

Borrowers, the Guarantors, the lenders party thereto, and Term Loan Agent, have entered into that certain Credit Agreement dated as of the date hereof (the "**Term Loan Credit Agreement**") pursuant to which such lenders have agreed to make term loans to Borrowers. The obligation of Borrowers to repay the Term Loan Debt under the Term Loan Credit Agreement is guaranteed by the Guarantors;

The obligations of Borrowers and the Guarantors under the ABL Documents are to be secured (a) on a first priority basis by Liens on the ABL Priority Collateral, and (b) on a second priority basis by Liens on the Term Loan Priority Collateral;

The obligations of Borrowers and the Guarantors under the Term Loan Documents are to be secured (a) on a first priority basis by Liens on the Term Loan Priority Collateral, and (b) on a second priority basis by Liens on the ABL Priority Collateral; and

ABL Agent, for itself and on behalf of the ABL Claimholders, and Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, desire to enter into this Agreement to (a) confirm the relative priority of their respective Liens on the assets of Borrowers and the Guarantors, (b) provide for the application, in accordance with such priorities, of proceeds of such Collateral, and (c) address certain other matters.

## AGREEMENT

In consideration of the foregoing, the mutual covenants and obligations herein set forth, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

### **SECTION 1. Definitions; Rules of Construction.**

1.1 **Defined Terms.** Any terms (whether capitalized or lower case) used in this Agreement that are defined in the UCC shall be construed and defined as set forth in the UCC unless otherwise defined herein; provided, that to the extent that the UCC is used to define any term used herein and if such term is defined differently in different Articles of the UCC, the definition of such term contained in Article 9 of the UCC shall govern. As used in the Agreement, the following terms shall have the following meanings:

“**ABL Agent**” has the meaning set forth in the preamble to this Agreement.

“**ABL Cap**” means, as of any date of determination, the result of:

(a) the sum of (which amount shall be increased by the amount of all interest, fees, costs, expenses, indemnities, and other amounts accrued or charged with respect to any of the ABL Debt (other than Excess ABL Debt) as and when the same accrues or becomes due and payable, irrespective of whether the same is added to the principal amount of the ABL Debt (and including the same as would accrue and become due but for the commencement of an Insolvency Proceeding except with respect to a Grantor any such amounts that are not allowed in any Insolvency Proceeding of such Grantor):

(i) an amount equal to the lesser of:

(A) \$220,000,000, and

(B) the amount that is the sum of:

(I) 107.5% of the Stated Borrowing Base at the time of determination; plus

(II) additional Outstanding ABL Principal Obligations to the extent such Outstanding ABL Principal Obligations (X) are in excess of the amount set forth in clause (B)(I) above and (Y) were not knowingly made or incurred in excess of the amount set forth in clause (B)(I) above when so extended (“**Unintentional Overformula Advances**”); plus

(III) if at the time of determination an Unintentional Overformula Advance exists, the greater of:

(x) \$5,000,000, and



(y) an amount equal to 10% of the Outstanding ABL Principal Obligations immediately prior to the incurrence of Outstanding ABL Principal Obligations in excess of amounts thereof permitted to be incurred under clause (a)(i)(B)(I) and (II) above (provided that availability under this clause (y) shall refresh each time no Outstanding ABL Principal Obligations exist in excess of the aggregate amount set forth in clauses (a)(i)(B)(I) and (II) above); plus

(IV) during an Insolvency Proceeding, the greatest of:

(x) 120% of the Stated Borrowing Base at the time of determination minus the Outstanding ABL Principal Obligations at the applicable filing date of the Insolvency Proceeding;

(y) \$5,000,000; and

(z) an amount equal to 10% of the Outstanding ABL Principal Obligations immediately prior to the commencement of the Insolvency Proceeding, minus the amount of the Outstanding ABL Principal Obligations outstanding under clause (a)(i)(B)(III) above immediately prior to the commencement of the Insolvency Proceeding; plus

(ii) the amount of the Bank Product Obligations; plus

(iii) amounts paid for taxes, insurance and other similar protective advances made to preserve and protect the value of the ABL Priority Collateral;

minus

(b) the amount of all payments of revolving loan obligations and other Outstanding ABL Principal Obligations under the ABL Credit Agreement that result in a permanent reduction of the revolving credit or other commitments under the ABL Credit Agreement (other than payments of such revolving loan obligations and other Outstanding ABL Principal Obligations in connection with a Refinancing thereof).

Any net increase in the aggregate principal amount of a loan or advance or letter of credit (on a U.S. Dollar Equivalent basis) after the loan or advance is made or the letter of credit issued that is caused by a fluctuation in the exchange rate of the currency in which the loan or advance or letter of credit is denominated will be ignored in determining whether the ABL Cap has been exceeded.

**“ABL Cash Collateral”** has the meaning set forth in Section 6.2(a).

**“ABL Claimholders”** means, as of any date of determination, the holders of the ABL Debt at that time, including (a) ABL Agent, (b) the Co-Collateral Agents (as defined in the ABL Credit Agreement), (c) the ABL Lenders, and (d) the Bank Product Providers.

**"ABL Collateral"** means the assets of each and every Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any ABL Debt, including all proceeds and products thereof.

**"ABL Collateral Documents"** means the ABL Security Agreement, the ABL Mortgages, and any other agreement, document, or instrument pursuant to which a Lien is granted (or purported to be granted) securing any ABL Debt or under which rights or remedies with respect to such Liens are governed.

**"ABL Credit Agreement"** has the meaning set forth in the recitals to this Agreement.

**"ABL Debt"** means all Obligations (as that term is defined in the ABL Credit Agreement) and all other amounts owing, due, or secured under the terms of the ABL Credit Agreement or any other ABL Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, reasonable attorneys' fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, Letters of Credit, Bank Product Obligations, obligations to provide cash collateral in respect of Letters of Credit or Bank Product Obligations or indemnities in respect thereof, any other indemnities or guarantees, and all other amounts, in each case above payable under or secured by any ABL Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the ABL Documents but for the effect of the Insolvency Proceeding, except with respect to a Grantor any such amounts that are not allowed in any Insolvency Proceeding of such Grantor), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured, including any ABL DIP Financing provided by any of the ABL Claimholders under the ABL Documents.

**"ABL Default"** means any "Event of Default", as such term is defined in any ABL Document.

**"ABL Default Disposition"** has the meaning set forth in Section 5.1(g).

**"ABL Diminution Amount"** means, as of any date of determination, the amount of any decrease in value of the ABL Priority Collateral that is entitled to adequate protection from and after the date of the commencement of any Insolvency Proceeding.

**"ABL Deficiency Claim"** means any portion of the ABL Debt consisting of an allowed unsecured claim under Section 506(a) of the Bankruptcy Code (or any similar provision under any other law governing an Insolvency Proceeding).

**"ABL DIP Cap"** means, as of any date of determination, the result of:

(a) the ABL Cap at such date, minus

(b) the aggregate amount of Outstanding ABL Principal Obligations as of the date of the incurrence of any ABL DIP Financing (after giving effect to any Refinancing of Outstanding ABL Principal Obligations under any ABL DIP Financing).

**"ABL DIP Financing"** has the meaning set forth in Section 6.2(a).

**"ABL DIP Financing Conditions"** means (a) that (i) Term Loan Agent retains its Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (ii) as to the Term Loan Priority Collateral that existed as of the date of the commencement of such Insolvency Proceeding (including proceeds thereof arising after such commencement of the Insolvency Proceeding), Term Loan Agent's Liens with respect to such Collateral remain senior and prior to the Liens (inclusive of any Liens securing the ABL DIP Financing) of ABL Agent (or of the agent and lenders with respect to the ABL DIP Financing) with respect to such Collateral, and (iii) as to Term Loan Priority Collateral acquired by the applicable Grantor after the commencement of such Insolvency Proceeding (excluding proceeds of Term Loan Priority Collateral existing prior to the commencement of applicable Insolvency Proceeding), either (A) neither the ABL Claimholders (nor the agent and lenders with respect to the ABL DIP Financing) nor the Term Loan Claimholders obtain a Lien with respect to such Collateral, or (B) if a Lien with respect to such Collateral is granted to secure any obligations owing to the ABL Claimholders under any ABL Documents or any ABL DIP Financing, then Term Loan Agent obtains a Lien with respect to such Collateral and the Liens with respect to such Collateral securing obligations owing to the ABL Claimholders under any ABL Documents or any ABL DIP Financing are junior and subordinate to the Liens of Term Loan Agent with respect to such Collateral, (b) in the case of ABL DIP Financing, that the sum of the Outstanding ABL DIP Principal Obligations plus the Outstanding ABL Principal Obligations does not exceed the ABL Cap, (c) that the proposed ABL Cash Collateral use or ABL DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which any material portion of the material terms are set forth in the ABL Cash Collateral order or ABL DIP Financing documentation, as applicable, (d) that the proposed ABL Cash Collateral order or ABL DIP Financing documentation does not directly or indirectly require or compel the sale of all or substantially all of the Collateral other than pursuant to the exercise of remedies after default and acceleration of such ABL DIP Financing pursuant to such order or documentation, and (e) that the ABL DIP Financing is otherwise subject to, and in compliance with, the terms of this Agreement.

**"ABL Documents"** means the ABL Collateral Documents, the ABL Credit Agreement, each of the other Loan Documents (as that term is defined in the ABL Credit Agreement) and each of the documents executed in connection with any ABL DIP Financing provided by Agent and any ABL Claimholder unless such documents expressly provide at the time executed that they shall not constitute ABL Documents for purposes of this Agreement and that the debt incurred thereunder shall not constitute ABL Debt for purposes of this Agreement.

**"ABL Lenders"** means the "Lenders" as that term is defined in the ABL Credit Agreement, or any analogous term having substantially the same meaning (including the Issuing Lender and the Swing Lender (as those terms are defined in the ABL Credit Agreement)).

**"ABL Mortgages"** means each mortgage, deed of trust, and other document or instrument under which any Lien on real property or fixtures owned or leased by any Grantor is granted to secure any ABL Debt or under which rights or remedies with respect to any such Liens are governed.

**"ABL Priority Collateral"** means all of each and every Grantor's right, title, and interest in and to the following types of property of such Grantor, wherever located and whether now owned by such Grantor or hereafter acquired (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute ABL Priority Collateral):

(a) all Accounts (except to the extent that such Accounts constitute proceeds of Term Loan Priority Collateral);

(b) all inventory;

(c) all instruments, chattel paper (including all tangible and electronic chattel paper) and other contracts, in each case to the extent governing, evidencing, substituting for, arising from or constituting proceeds of any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral);

(d) all deposit accounts and securities accounts into which any proceeds of ABL Priority Collateral are deposited (including any cash and other funds or other property held in or on deposit therein, except to the extent that such deposit accounts or securities accounts contain identifiable proceeds of Term Loan Priority Collateral), but excluding in any event the Term Loan Priority Collateral Deposit Account;

(e) all contracts, documents of title, and other documents that evidence the ownership of, right to receive or possess, or that otherwise relate to, any ABL Priority Collateral, including contracts, documents of title, and other documents that relate to the acquisition of, or sale or other Disposition of, any inventory, and all contracts, documents of title, or other documents that arise from or constitute proceeds of ABL Priority Collateral;

(f) all guaranties, contracts of suretyship, insurance, letters of credit, letter-of-credit rights, security and other credit enhancements (including repurchase agreements), and supporting obligations, in each case in respect of the ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral), including (i) rights of stoppage in transit, replevin, repossession, reclamation, and other rights and remedies of an unpaid vendor in respect of ABL Priority Collateral, and (ii) identifiable deposits by and property of account debtors or other persons securing the obligations of account debtors in respect of Accounts or other Receivables (except to the extent that such Accounts or other Receivables constitute proceeds of Term Loan Priority Collateral);

(g) all commercial tort claims and general intangibles (other than Intellectual Property) to the extent (i) arising from, relating to, or constituting identifiable proceeds of any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral), inventory or other ABL Priority Collateral, (ii) relating to or arising out of the manufacture, distribution, sale, or other Disposition of inventory, or (iii) relating to or arising out of the collection of, or realization upon, any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral);

(h) all cash and cash equivalents of any kind at any time deposited with or held by any ABL Claimholder that arise from or constitute proceeds of ABL Priority Collateral

(except to the extent that such Collateral constitutes identifiable proceeds of Term Loan Priority Collateral);

(i) all investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts, or commodity accounts) and all monies, credit balances, deposits, and other property of any Grantor now or hereafter held, or received by, or in transit to, an ABL Claimholder, any bank, securities intermediary, depository, or other institution from or for the account of any Grantor, whether for safekeeping, pledge, custody, transmission, collection, or otherwise, in each case, to the extent arising from or constituting proceeds of ABL Priority Collateral (except to the extent that such Collateral constitutes identifiable proceeds of Term Loan Priority Collateral);

(j) all claims under policies of casualty insurance and all proceeds of casualty insurance, in each case, to the extent payable by reason of loss or damage to any ABL Priority Collateral (except to the extent that such Collateral constitutes proceeds of Term Loan Priority Collateral) and all claims under policies of business interruption insurance and all proceeds of business interruption insurance (provided, that with respect to proceeds of business interruption insurance, subject to Section 4.5, 50% of such proceeds shall constitute ABL Priority Collateral and 50% of such proceeds shall constitute Term Loan Priority Collateral);

(k) to the extent not otherwise described above, all Receivables (except to the extent that such Receivables constitute identifiable proceeds of Term Loan Priority Collateral);

(l) all Books to the extent evidencing, relating to, or referring to any of the foregoing (provided that all Books to the extent evidencing, relating to, or referring to any Term Loan Priority Collateral shall also constitute Term Loan Priority Collateral, and the parties shall be governed by Section 3.10 with respect thereto, and their Liens therein, to the extent such Books evidence, relate to or refer to both the ABL Priority Collateral and the Term Loan Priority Collateral and to the extent not divisible by such categories, shall be *pari passu* in right thereto); and

(m) all substitutions, replacements, accessions, products, or proceeds of any of the foregoing, in any form, including insurance proceeds and all claims against third parties for loss or damage to, or destruction of, or other involuntary conversion (including claims in respect of condemnation) of any kind or nature of any or all of the foregoing.

For purposes of clarification, and notwithstanding anything to the contrary set forth in this Agreement, (i) except as expressly set forth above, Intellectual Property shall not constitute ABL Priority Collateral, but instead shall constitute Term Loan Priority Collateral, (ii) any of the items set forth in clauses (a) through (m) of this definition that are or become branded with, or produced through the use or other application of, any Intellectual Property, whether pursuant to the exercise of rights pursuant to Section 3.9 or otherwise, shall constitute ABL Priority Collateral, and no proceeds arising from any Disposition of any such ABL Priority Collateral shall be, or be deemed to be, attributable to Term Loan Priority Collateral, and (iii) without prejudice to all other categories of Term Loan Priority Collateral, and except as otherwise provided in Section 3.11, all interests in real property, all equipment and fixtures, all Equity Interests and the Term Loan Priority Collateral Deposit Account and all cash on deposit

therein (other than identifiable proceeds of ABL Priority Collateral) shall constitute Term Loan Priority Collateral.

**"ABL Priority Debt"** means all ABL Debt other than Excess ABL Debt.

**"ABL Retained Interest"** has the meaning set forth in Section 10.2

**"ABL Secured Claim"** means any portion of the ABL Debt not constituting an ABL Deficiency Claim.

**"ABL Security Agreement"** means the "Guaranty and Security Agreement" as that term is defined in the ABL Credit Agreement.

**"Agent"** means ABL Agent or Term Loan Agent, as the context requires.

**"Agreement"** has the meaning set forth in the preamble hereto.

**"Bank Product Agreements"** means the "Bank Product Agreements," as that term is defined in the ABL Credit Agreement as in effect on the date hereof or any substantially similar term in any Refinancing.

**"Bank Product Obligations"** means the "Bank Product Obligations," as that term is defined in the ABL Credit Agreement as in effect on the date hereof or any substantially similar term in any Refinancing; provided that notwithstanding such definition, in no event shall Bank Product Obligations, as used herein, include indebtedness for borrowed money (other than ABL Debt incurred to repay outstanding Bank Product Obligations), it being agreed the customary ACH, customary credit card and customary overdraft facilities shall not constitute indebtedness for borrowed money for purposes of this definition.

**"Bank Product Providers"** means the "Bank Product Providers," as that term is defined in the ABL Credit Agreement as in effect on the date hereof or any substantially similar term in any Refinancing.

**"Bankruptcy Code"** means Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, or any successor statute.

**"Bankruptcy Law"** means the Bankruptcy Code and any other federal, state, or foreign law for the relief of debtors or affecting creditors' rights generally.

**"Books"** means books and records of each Grantor (including each Grantor's Records indicating, summarizing, or evidencing such Grantor's assets (including the Collateral) or liabilities, each Grantor's Records relating to such Grantor's business operations or financial condition, including customer lists, invoices, credit memos, purchase and file orders, and each Grantor's goods or general intangibles related to such items).

**"Borrower"** and **"Borrowers"** have the meaning set forth in the recitals to this Agreement.

**"Borrowing Base"** means the "Borrowing Base" as defined in the ABL Credit Agreement as in effect on the date hereof (including each term used as a defined term within such definition).

**"Business Day"** means any day other than a Saturday, Sunday, or day on which banks in New York City and Chicago, Illinois are authorized or required by law to close.

**"Cash Dominion"** means the exercise of dominion with respect to Borrower's or any Guarantor's deposit accounts, following the delivery of a notice from ABL Agent to the applicable depository bank, pursuant to which, in accordance with the applicable deposit account control agreement, ABL Agent directs that such depository bank follow ABL Agent's instructions with respect to such deposit accounts (and any and all funds in such deposit accounts) and that such depository bank cease following Borrower's or any Guarantor's, as applicable, instructions with respect to such deposit accounts (and any and all funds in such deposit accounts).

**"Claimholders"** means the ABL Claimholders and the Term Loan Claimholders, or any one of them.

**"Collateral"** means all of the assets of each and every Grantor, whether real, personal or mixed, constituting ABL Collateral or Term Loan Collateral.

**"Collateral Documents"** means the ABL Collateral Documents or the Term Loan Collateral Documents, as the context requires.

**"Debt"** means the ABL Debt or the Term Loan Debt, as the context requires.

**"Disposition"** or **"Dispose"** means the sale, assignment, transfer, license, lease (as lessor), exchange, or other disposition (including any sale and leaseback transaction) of any property by any person (or the granting of any option or other right to do any of the foregoing).

**"Enforcement Action"** means

(a) the taking of any action to enforce any Lien in respect of the Collateral, including the institution of any foreclosure proceedings or the noticing of any public or private sale or other disposition pursuant to Article 9 of the UCC or other applicable law, or the taking of any action in an attempt to vacate or obtain relief from a stay or other injunction restricting any other action described in this definition,

(b) the exercise of any right or remedy provided to a secured creditor under the ABL Documents or the Term Loan Documents (excluding, for so long as revolving loan commitments have not been terminated or suspended and are otherwise available to provide financing to the Grantors under the ABL Credit Agreement, any exercise of Cash Dominion, but including, in either case, any delivery of any notice to seek to obtain payment directly from any account debtor of any Grantor or other person obligated on any Collateral of any Grantor (other than any depository bank), the taking of any action or the exercise of any right or remedy in respect of the Collateral, or the exercise of any right of setoff or recoupment with respect to

obligations owed to any Grantor), under applicable law, at equity, in an Insolvency Proceeding or otherwise, including the acceptance of Collateral in full or partial satisfaction of an obligation,

(c) the Disposition of all or any portion of the Collateral, by private or public sale or any other means,

(d) the solicitation of bids from third parties to conduct the Disposition of all or a material portion of the Collateral,

(e) the engagement or retention of sales brokers, marketing agents, investment bankers, accountants, appraisers, auctioneers, or other third parties for the purpose of valuing, marketing, or Disposing of all or a material portion of the Collateral,

(f) the exercise of any other enforcement right relating to the Collateral (including the exercise of any voting rights relating to any Equity Interests composing a portion of the Collateral) whether under the ABL Documents, the Term Loan Documents, under applicable law of any jurisdiction, in equity, in an Insolvency Proceeding, or otherwise (including the commencement of applicable legal proceedings or other actions with respect to the Collateral to facilitate the actions described in the preceding clauses), and

(g) the pursuit of ABL Default Dispositions or Term Loan Default Dispositions relative to all or a material portion of the Collateral to the extent undertaken and being diligently pursued in good faith to consummate the Disposition of such Collateral within a commercially reasonable time.

**"Enforcement Notice"** means a written notice delivered by either ABL Agent or Term Loan Agent to the other stating (a) that an ABL Default or a Term Loan Default, as applicable, has occurred and is continuing under the ABL Credit Agreement or the Term Loan Credit Agreement, as applicable, and specifying the nature of the relevant event of default, and (b) that an Enforcement Period has commenced with respect to the applicable Priority Collateral.

**"Enforcement Period"** means the period of time following the earlier of (i) receipt by either ABL Agent or Term Loan Agent of an Enforcement Notice from the other or (ii) the commencement by any ABL Claimholder or Term Loan Claimholder of any Enforcement Action, and continuing until the earliest of (a) in case of an Enforcement Period commenced by Term Loan Agent, the Payment in Full of Term Loan Priority Debt, (b) in the case of an Enforcement Period commenced by ABL Agent, the Payment in Full of ABL Priority Debt, or (c) ABL Agent or Term Loan Agent (as applicable) terminates, or agrees in writing to terminate, the Enforcement Period (including in connection with a waiver or cure of the event of default that gave rise to such Enforcement Notice).

**"Equity Interests"** means "Equity Interest" as that term is defined in the ABL Credit Agreement.

**"Excess ABL Debt"** means the sum of (a) the portion of the sum of the Outstanding ABL Principal Obligations plus, if applicable, the Outstanding ABL DIP Principal Obligations that is in excess of the ABL Cap, plus (b) the portion of interest and fees that accrues or is charged with respect to that portion of the Outstanding ABL Principal Obligations plus, if



applicable, the Outstanding ABL DIP Principal Obligations described in clause (a) of this definition.

**"Excluded Collateral"** means (a) any assets described as "Excluded Collateral" in the ABL Security Agreement and the Term Loan Security Agreement, and (b) any other assets of any Grantor, whether real, personal, or mixed, with respect to which a Lien is not granted (and not purported to be granted) as security for the ABL Debt or the Term Loan Debt (excluding, for the avoidance of doubt, any asset that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute Collateral).

**"Final Order"** means an order of a court of competent jurisdiction as to which the time to appeal, petition for *certiorari*, or move for re-argument or rehearing has expired and as to which no appeal, petition for *certiorari*, or other proceedings for re-argument or rehearing shall then be pending or, in the event that an appeal, writ of *certiorari*, or re-argument or rehearing thereof has been filed or sought, such order shall have been affirmed or confirmed by the highest court to which such order was appealed, or from which *certiorari*, re-argument or rehearing was sought and the time to take any further appeal, petition for *certiorari* or move for re-argument or rehearing shall have expired; provided, that the possibility that a motion under Rule 59 or Rule 60 of the Federal Rules of Civil Procedure or any analogous rule under the Federal Rules of Bankruptcy Procedure or applicable state court rules of civil procedure, may be filed with respect to such order shall not cause such order not to be a Final Order.

**"Governmental Authority"** means the government of the United States of America or any other nation, any political subdivision thereof, whether state, provincial, or local, and any agency, authority, instrumentality, regulatory body, court, central bank, or other entity exercising executive, legislative, judicial, taxing, regulatory, or administrative powers or functions of or pertaining to government.

**"Grantors"** means each Borrower and each Guarantor, and each other person that may, from time to time, execute and deliver an ABL Collateral Document or a Term Loan Collateral Document as a "debtor," "grantor," "obligor," or "pledgor" (or the equivalent thereof) or that may, from time to time, be (or whose assets may be) subject to a judgment lien in favor of any of the ABL Claimholders or any of the Term Loan Claimholders in respect of the ABL Debt or the Term Loan Debt, as applicable, and **"Grantor"** means any one of them.

**"Guarantors"** has the meaning set forth in the recitals to this Agreement and **"Guarantor"** means any one of them.

**"Inalienable Interests"** has the meaning set forth in Section 4.4.

**"Insolvency Proceeding"** means:

(a) any voluntary or involuntary case or proceeding under any Bankruptcy Law with respect to any Grantor;

(b) any other voluntary or involuntary insolvency or bankruptcy case or proceeding, or any receivership, liquidation or other similar case or proceeding with respect to any Grantor or with respect to a material portion of its assets;

(c) any liquidation, dissolution, or winding up of any Grantor whether voluntary or involuntary and whether or not involving insolvency or bankruptcy; or

(d) any assignment for the benefit of creditors or any other marshaling of assets or liabilities of any Grantor.

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

**"Intellectual Property"** means the "Intellectual Property" as that term is defined in the Term Loan Security Agreement as in effect on the date hereof or any substantially similar term under any Refinancing.

**"Junior Agent"** means, with respect to the ABL Priority Collateral, Term Loan Agent, and with respect to the Term Loan Priority Collateral, ABL Agent.

**"Junior Claimholders"** means, with respect to the ABL Priority Collateral, the Term Loan Claimholders, and with respect to the Term Loan Priority Collateral, the ABL Claimholders.

**"Junior Collateral"** means, with respect to the ABL Debt, all Collateral other than ABL Priority Collateral, and with respect to the Term Loan Debt, all Collateral other than Term Loan Priority Collateral.

**"Junior Debt"** means, with respect to the ABL Priority Collateral, the Term Loan Debt, and with respect to the Term Loan Priority Collateral, the ABL Debt.

**"Junior 507(b) Claims"** has the meaning set forth in Section 6.5(f).

**"Junior Lenders"** means, with respect to the ABL Priority Collateral, the Term Loan Lenders, and with respect to the Term Loan Priority Collateral, the ABL Lenders.

**"Letters of Credit"** means the "Letters of Credit" issued pursuant to, and as that term is defined in, the ABL Credit Agreement.

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

**"Loan Documents"** means ABL Documents or Term Loan Documents, as the context requires.

**"Ordinary Course Collections"** has the meaning set forth in Section 4.1.

**“Outstanding ABL DIP Principal Obligations”** means the sum of (x) the outstanding principal amount of all loans and advances (including all amounts constituting capitalized interest, if any) plus (y) the undrawn amount available under all letters of credit plus (z) all outstanding reimbursement obligations in respect of amounts drawn under letters of credit, in each case under or incurred pursuant to any ABL Documents governing ABL DIP Financing.

**“Outstanding ABL Principal Obligations”** means the sum of (x) the outstanding principal amount of all loans and advances (including all amounts constituting capitalized interest, if any) plus (y) the undrawn amount available under all letters of credit plus (z) all outstanding reimbursement obligations in respect of amounts drawn under letters of credit, in each case under or incurred pursuant to the ABL Credit Agreement or any other ABL Documents, other than Outstanding ABL DIP Principal Obligations.

**“Payment in Full of ABL Priority Debt”** means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) payment in U.S. Dollars in full in cash or immediately available funds of all of the ABL Priority Debt (other than outstanding Letters of Credit and Bank Product Obligations and other than unasserted contingent indemnification obligations);

(b) termination or expiration of all commitments, if any, of the ABL Lenders to extend credit to Borrowers;

(c) termination of, or providing cash collateral (in an amount, to the extent, and in the manner required by the ABL Credit Agreement) in respect of, all outstanding Letters of Credit that compose a portion of the ABL Debt;

(d) termination of (and paying the outstanding amount due in respect of), or providing cash collateral (in an amount, to the extent, and in the manner required by the ABL Credit Agreement) in respect of, all Bank Product Obligations, and

(e) providing cash collateral to ABL Agent in such amount as ABL Agent determines is reasonably necessary to secure the ABL Claimholders in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the ABL Claimholders may be entitled to indemnification by any Grantor pursuant to the indemnification provisions in the ABL Documents.

**“Payment in Full of Priority Debt”** means, (a) if the Term Loan Priority Debt constitutes the Priority Debt, the Payment in Full of Term Loan Priority Debt, and (b) if the ABL Priority Debt constitutes the Priority Debt, the Payment in Full of ABL Priority Debt.

**“Payment in Full of Term Loan Priority Debt”** means, except to the extent otherwise expressly provided in Section 5.5 or in Section 6.8:

(a) payment in U.S. Dollars in full in cash or immediately available funds of all of the Term Loan Priority Debt (other than unasserted contingent indemnification obligations);

(b) termination or expiration of all commitments, if any, of the Term Loan Lenders to extend credit to Borrowers; and

(c) providing cash collateral to Term Loan Agent in such amount as Term Loan Agent determines is reasonably necessary to secure the Term Loan Claimholders in respect of any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any of the Term Loan Claimholders may be entitled to indemnification by any Grantor pursuant to the indemnification provisions in the Term Loan Documents.

**"person"** means any natural person, corporation, trust, business trust, joint venture, joint stock company, association, company, limited liability company, partnership, Governmental Authority, or other entity.

**"Pledged Collateral"** has the meaning set forth in Section 5.4(a).

**"Priority Agent"** means, with respect to the ABL Priority Collateral, ABL Agent, and with respect to the Term Loan Priority Collateral, Term Loan Agent.

**"Priority Collateral"** means, with respect to the ABL Debt, all ABL Priority Collateral, and with respect to the Term Loan Debt, all Term Loan Priority Collateral.

**"Priority Claimholders"** means, with respect to the ABL Priority Collateral, the ABL Claimholders, and with respect to the Term Loan Priority Collateral, the Term Loan Claimholders, subject to the reciprocal rights set forth in Section 9.17.

**"Priority Debt"** means, with respect to the ABL Priority Collateral, the ABL Debt, and with respect to the Term Loan Priority Collateral, the Term Loan Debt.

**"Priority Lenders"** means, with respect to the ABL Priority Collateral, the ABL Lenders, and with respect to the Term Loan Priority Collateral, the Term Loan Lenders.

**"Purchase Notice"** has the meaning set forth in Section 10.

**"Receivables"** means all of the following now owned or hereafter arising or acquired assets of any Grantor: (a) all amounts at any time payable to any Grantor in respect of the sale or other Disposition of any Account (except to the extent that such Accounts or Receivables constitute identifiable proceeds of Term Loan Priority Collateral); (b) all interest, fees, late charges, penalties, collection fees, and other amounts due or to become due or otherwise payable in connection with any Account (except to the extent that such Accounts or Receivables constitute identifiable proceeds of Term Loan Priority Collateral); (c) all payment intangibles (except to the extent that such Collateral constitutes identifiable proceeds of Term Loan Priority Collateral); and (d) all other contract rights, chattel paper, instruments, or other forms of rights to payment, in each case arising from the sale, lease, or other Disposition of inventory, the licensing of inventory, the rendition of services, or otherwise related to any Account (except to the extent that such Accounts or Receivables constitute identifiable proceeds of Term Loan Priority Collateral) or inventory of a Grantor (including, choses in action, causes of action, or other rights and claims against carriers or shippers, rights to indemnification, and

identifiable proceeds thereof, casualty or similar types of insurance, in each case to the extent relating to ABL Priority Collateral and identifiable proceeds thereof).

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

**"Recovery"** has the meaning set forth in Section 6.8.

**"Refinance"** means, in respect of any indebtedness, to refinance, extend, renew, supplement, restructure, replace, refund, or repay, or to issue other indebtedness in exchange or replacement for such indebtedness, in whole or in part, whether with the same or different lenders, arrangers, or agents. **"Refinanced"** and **"Refinancing"** shall have correlative meanings.

**"Senior 507(b) Claims"** has the meaning set forth in Section 6.5(e).

**"Standstill Notice"** means a written notice from ABL Agent to Term Loan Agent or from Term Loan Agent to ABL Agent, as applicable, identified by its terms as a "Standstill Notice" for purposes of this Agreement and stating that an ABL Default or Term Loan Default, as applicable, has occurred and is continuing and that, as a consequence thereof, ABL Agent has declared all of the ABL Priority Debt to be immediately due and payable or the Term Loan Agent has declared all of the Term Loan Priority Debt to be immediately due and payable, as applicable.

**"Standstill Period"** means the period of 120 days commencing on the date on which ABL Agent or Term Loan Agent, as applicable, receives the applicable Standstill Notice.

**"Stated Borrowing Base"** means a borrowing base determined in a manner identical to the Borrowing Base (including all advance rates and all defined terms used therein or in connection therewith, in each case as so defined), and giving full effect to, and reducing availability by the amount of, all reserves (including "Reserves", "Landlord Reserves" (each as defined in the ABL Credit Agreement as in effect on the date hereof) and reserves for any other amounts that are or would be secured by a Lien on the ABL Priority Collateral that would have priority superior to the priority of the Lien in favor of ABL Agent on ABL Priority Collateral securing the ABL Priority Debt (herein, "**Lien Priority Reserves**")); provided, however, that for purposes of calculating the Stated Borrowing Base (a) the Co-Collateral Agents shall not revise any "excluding criteria" (as permitted in Co-Collateral Agents' Permitted Discretion within the proviso of each definition of Eligible Accounts and Eligible Inventory) in order to cause ineligible Accounts and ineligible Inventory to be Eligible Accounts or Eligible Inventory; and (b) Co-Collateral Agents shall not reduce the amount of any Lien Priority Reserve (as defined below) unless in Co-Collateral Agents' Permitted Discretion such reduction reflects the reduction of the amount of the claim secured by the Lien having priority superior to the priority of the Lien in favor of ABL Agent on the ABL Priority Collateral; provided further, that the foregoing restriction shall not restrict Co-Collateral Agents' right to establish, increase or decrease other reserves (other than Lien Priority Reserves) against the Borrowing Base.

**"Subsidiary"** of a person means a corporation, partnership, limited liability company, or other entity as to which that person directly or indirectly owns or controls the Equity Interests 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.

**"Term Cash Proceeds Notice"** shall mean a written notice delivered by the Term Loan Agent or any Grantor to the ABL Agent (a) stating either that a Disposition of Term Loan Priority Collateral with respect to specifically identified Collateral is being effected or that an Event of Default has occurred and is continuing under any Term Loan Document and specifying the relevant Event of Default and (b) stating that certain cash proceeds which may be deposited in any Grantor's deposit account, collection account or other account (other than the Term Loan Priority Collateral Deposit Account) constitute Term Priority Collateral, and reasonably identifying the amount of such proceeds and specifying the origin thereof.

**"Term Loan Agent"** has the meaning set forth in the preamble to this Agreement.

**"Term Loan Cash Collateral"** has the meaning set forth in Section 6.2(b).

**"Term Loan Claimholders"** means, as of any date of determination, the holders of the Term Loan Debt at that time, including (a) Term Loan Agent, and (b) the Term Loan Lenders.

**"Term Loan Collateral"** means all of the assets of each and every Grantor, whether real, personal, or mixed, with respect to which a Lien is granted as security for any Term Loan Debt, including all proceeds and products thereof.

**"Term Loan Collateral Documents"** means the Term Loan Security Agreement, the Term Loan Mortgages, each Intellectual Property Security Agreement (as that term is defined in the Term Loan Credit Agreement) and any other agreement, document, or instrument pursuant to which a Lien is granted (or purported to be granted) securing any Term Loan Debt or under which rights or remedies with respect to such Liens are governed.

**"Term Loan Credit Agreement"** has the meaning set forth in the recitals to this Agreement.

**"Term Loan Debt"** means all Obligations (as that term is defined in the Term Loan Credit Agreement) and all other amounts owing, due, or secured under the terms of the Term Loan Credit Agreement or any other Term Loan Document, whether now existing or arising hereafter, including all principal, premium, interest, fees, reasonable attorney's fees, costs, charges, expenses, reimbursement obligations, obligations with respect to loans, indemnities, guarantees, and all other amounts, in each case above, payable under or secured by any Term Loan Document (including, in each case, all amounts accruing on or after the commencement of any Insolvency Proceeding relating to any Grantor, or that would have accrued or become due under the terms of the Term Loan Documents but for the effect of the Insolvency Proceeding, except with respect to a Grantor any such amounts that are not allowed in any Insolvency Proceeding of such Grantor), in each case whether direct or indirect, absolute or contingent, joint or several, due or not due, primary or secondary, liquidated or unliquidated, secured or unsecured.

**"Term Loan Default"** means any "Event of Default", as such term is defined in any Term Loan Document.

**"Term Loan Diminution Amount"** means, as of any date of determination, amount of any decrease in value of the Term Loan Priority Collateral that is entitled to adequate protection from and after the date of the commencement of any Insolvency Proceeding.

**"Term Loan Deficiency Claim"** means any portion of the Term Loan Debt consisting of an allowed unsecured claim under Section 506(a) of the Bankruptcy Code (or any similar provision under any other law governing an Insolvency Proceeding).

**"Term Loan Default Disposition"** has the meaning set forth in Section 5.1(h).

**"Term Loan DIP Financing"** has the meaning set forth in Section 6.2(b).

**"Term Loan DIP Financing Conditions"** means (a) that (i) ABL Agent retains its Liens with respect to the Collateral that existed as of the date of the commencement of the applicable Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), (ii) as to the ABL Priority Collateral that existed as of the date of such commencement of such Insolvency Proceeding (including proceeds thereof arising after the commencement of such Insolvency Proceeding), ABL Agent's Liens with respect to such Collateral remain senior and prior to the Liens (inclusive of any Liens securing the Term Loan DIP Financing) of Term Loan Agent (or of the agent and lenders with respect to the Term Loan DIP Financing) with respect to such Collateral, and (iii) as to ABL Priority Collateral acquired by the applicable Grantor after the commencement of Insolvency Proceeding (excluding proceeds of ABL Priority Collateral existing prior to the commencement of such Insolvency Proceeding), either (A) neither the ABL Claimholders nor the Term Loan Claimholders (nor the agent and lenders with respect to the Term Loan DIP Financing) obtain a Lien with respect to such Collateral, or (B) if a Lien with respect to such Collateral is granted to secure the Term Loan DIP Financing, then ABL Agent obtains a Lien with respect to such Collateral and the Liens with respect to such Collateral securing the Term Loan DIP Financing are junior and subordinate to the Liens of ABL Agent with respect to such Collateral, (b) that the proposed Term Loan Cash Collateral use or Term Loan DIP Financing does not compel any Grantor to seek confirmation of a specific plan of reorganization for which any material portion of the material terms are set forth in the Term Loan Cash Collateral order or Term Loan DIP Financing documentation, as applicable, (c) that the proposed Term Loan Cash Collateral order or Term Loan DIP Financing documentation does not require or compel the sale of all or substantially all of the Collateral other than pursuant to the exercise of remedies after default and acceleration of such ABL DIP Financing pursuant to such order or documentation, (d) that the Term Loan DIP Financing is otherwise subject to, and in compliance with, the terms of this Agreement.

**"Term Loan Documents"** means the Term Loan Collateral Documents, the Term Loan Credit Agreement, and each of the other "Loan Documents" (as that term is defined in the Term Loan Credit Agreement) and each of the documents executed in connection with any Term Loan DIP Financing provided by the Term Loan Claimholders unless such documents expressly provide at the time executed that they shall not constitute Term Loan Documents for purposes of

this Agreement and that the debt incurred thereunder shall not constitute Term Loan Debt for purposes of this Agreement. .

**"Term Loan Lenders"** means the "Lenders" as that term is defined in the Term Loan Credit Agreement.

**"Term Loan Mortgages"** means each mortgage, deed of trust, and any other document or instrument under which any Lien on real property owned or leased by any Grantor is granted to secure any Term Loan Debt or under which rights or remedies with respect to any such Liens are governed.

**"Term Loan Priority Collateral"** means all now owned or hereafter acquired Term Loan Collateral that does not constitute ABL Priority Collateral (including, for the avoidance of doubt, any such assets that, but for the application of Section 552 of the Bankruptcy Code (or any provision of any other Bankruptcy Law), would constitute ABL Priority Collateral), and, except as provided in Section 3.11, Term Loan Priority Collateral shall include in any event all interests in real property, all Intellectual Property, all equipment and fixtures, and all Equity Interests.

**"Term Loan Priority Collateral Deposit Account"** means the "Term Loan Priority Collateral Deposit Account" as defined in the Term Loan Credit Agreement (it being understood that any property in such account which constitutes identifiable proceeds of ABL Priority Collateral shall be ABL Priority Collateral).

**"Term Loan Priority Debt"** means all Term Loan Debt.

**"Term Loan Secured Claim"** means any portion of the Term Loan Debt not constituting a Term Loan Deficiency Claim.

**"Term Loan Security Agreement"** means the "Security Agreement" as that term is defined in the Term Loan Credit Agreement.

**"Term Retained Interest"** has the meaning set forth in Section 10.1

**"Triggering Event"** means with respect to the purchase option in favor of the Term Loan Claimholders, (i) the occurrence of either (x) the termination of revolving loan commitments under the ABL Credit Agreement or (y) both (I) the suspension of revolving loan commitments or the absence of sufficient availability thereunder for the Requested Credit Extension (as defined below) for any reason and (II) the failure of the ABL Lenders to make the Requested Credit Extension (whether by reinstatement of the revolving loan commitments with sufficient availability to make the Requested Credit Extension, or by extension of an overadvance in the amount necessary to make the Requested Credit Extension or by waiver of any other unsatisfied condition to make the Requested Credit Extension) within two Business Days following the date the Requested Credit Extension would otherwise be required to be made after the applicable request by a Borrower for the Requested Credit Extension (the end of such two Business Day period, the "Trigger Time"), (ii) the acceleration of the ABL Priority Debt and termination of the commitments to advance further revolving loans under the ABL Credit Agreement, (iii) ABL Agent's taking of any Enforcement Action with respect to all or a material



portion of the ABL Priority Collateral, (iv) the occurrence of a Term Loan Default as a result of a failure to make payment of any Term Loan Priority Debt when due under the terms of the Term Loan Documents, or (v) the commencement of an Insolvency Proceeding with respect to any Grantor. As used herein, "Requested Credit Extension" means an extension of credit requested by a Borrower under the ABL Credit Agreement and in an amount so requested (as such request may be amended), which shall not (i) exceed the amount reasonably determined by the relevant Borrower to be necessary for the operation of its business in the normal course and (ii) include any amount for capital expenditures or acquisitions (other than acquisitions of inventory and equipment and other operating property in the ordinary course) or other payments, distributions or transfers that would not be permitted under the terms of the ABL Credit Agreement or this Agreement (including any prohibited payments on account of any Term Loan Debt); provided, however, that if any Requested Credit Extension is made by the ABL Agent or ABL Lenders before receipt of a Purchase Notice (defined below) or if such Purchase Notice is not received by ABL Agent within five Business Days after the Trigger Time, then such Requested Credit Extension shall cease to constitute a Triggering Event for purposes of clause (i)(y)(II) above (provided that any future Requested Credit Extension may result in a Triggering Event in the circumstances specified in such clause).

"UCC" means the Uniform Commercial Code (or any similar or comparable legislation) as in effect in any applicable jurisdiction.

"Use Period" means the period, with respect to any Term Loan Priority Collateral, which begins on the earlier of (a) the day on which ABL Agent provides Term Loan Agent with written notice that it intends to exercise its rights under Section 3.9 with respect to such Term Loan Priority Collateral, and (b) the 5th Business Day after Term Loan Agent provides ABL Agent with written notice that Term Loan Agent (or its agent) has obtained possession or control, as applicable, of such Term Loan Priority Collateral and ends on the earlier of (i) the 120th day after the date on which ABL Agent initially has the right and ability to occupy, use, possess or control, as applicable, such Term Loan Priority Collateral and (ii) the date on which Payment in Full of ABL Priority Debt occurs; provided, that if any stay or other order has occurred by operation of law or has been entered by a court of competent jurisdiction that prohibits or limits any of the ABL Claimholders from commencing and continuing to undertake Enforcement Actions or to Dispose of the ABL Priority Collateral, such 120-day period shall be tolled during the pendency of such stay or other order and the Use Period shall be so extended and upon the expiration or lifting of such stay or order, if there are fewer than 90 days remaining in such 120 day period, then such 120 day period shall be extended so that the ABL Claimholders have a Use Period of 90 days remaining upon the expiration or lifting of such stay or order.

1.2 Construction. The definitions of terms in this Agreement shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine, and neuter forms. The words "include," "includes," and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall." The term "or" shall be construed to have, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." Any term used in this Agreement and not

defined in this Agreement shall have the meaning set forth in the ABL Credit Agreement. Unless the context requires otherwise:

(a) except as otherwise provided herein, any definition of or reference to any agreement, instrument, or other document herein shall be construed as referring to such agreement, instrument, or other document as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(b) any reference to a definition in an ABL Document shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the ABL Debt;

(c) any reference to a definition in a Term Loan Document shall be construed to also refer to any comparable term in any agreement, instrument, or other document the debt under which Refinances the Term Loan Debt;

(d) any reference to any agreement, instrument, or other document herein "as in effect on the date hereof" shall be construed as referring to such agreement, instrument, or other document without giving effect to any amendment, restatement, supplement, modification, or Refinancing thereto or thereof occurring after the date hereof;

(e) any definition of, or reference to, ABL Debt or the Term Loan Debt herein shall be construed as referring to the ABL Debt or the Term Loan Debt (as applicable) as from time to time amended, restated, supplemented, modified, renewed, extended, Refinanced, refunded, or replaced;

(f) any definition of, or reference to, ABL Collateral or Term Loan Collateral herein shall not be construed as referring to any amounts recovered by a Grantor, as a debtor in possession, or a trustee for the estate of a Grantor, under Section 506(c) of the Bankruptcy Code (or by comparable Persons under any other Bankruptcy Law);

(g) any reference herein to any person shall be construed to include such person's successors and assigns and as to any Grantor shall be deemed to include a receiver, trustee, or debtor-in-possession on behalf of any of such person or on behalf of any such successor or assignee of such person;

(h) except as otherwise expressly provided herein, any reference to ABL Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the ABL Claimholders, any reference to ABL Agent shall be construed as referring to ABL Agent, for itself and on behalf of the other ABL Claimholders, any reference to Term Loan Agent agreeing to or having the right to do, or refraining from or having the right to refrain from doing, an act shall be construed as binding upon each of the Term Loan Claimholders, any reference to Term Loan Agent shall be construed as referring to Term Loan Agent, for itself and on behalf of the other Term Loan Claimholders, any reference to the ABL Claimholders shall be construed as including ABL Agent, and any reference to the Term Loan Claimholders shall be construed as referring to Term Loan Agent;

(i) the words "herein," "hereof," and "hereunder," and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof;

(j) all references herein to Sections shall be construed to refer to Sections of this Agreement; and

(k) 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.

## **SECTION 2. Lien Priorities.**

### **2.1 Relative Priorities.**

(a) Subject to Section 2.1(c), notwithstanding the date, time, method, manner, or order of grant, attachment, or perfection of any Liens in the Collateral securing the Term Loan Debt or of any Liens in the Collateral securing the ABL Debt (including, in each case, notwithstanding whether any such Lien is granted (or secures Debt relating to the period) before or after the commencement of any Insolvency Proceeding) and notwithstanding any contrary provision of the UCC or any other applicable law or the Term Loan Documents or the ABL Documents or any other circumstance whatsoever, ABL Agent and Term Loan Agent hereby agree that:

(i) any Lien with respect to the ABL Priority Collateral securing any ABL Priority Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation, or otherwise, shall be senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing (A) any Term Loan Debt or (B) any Excess ABL Debt;

(ii) any Lien with respect to the ABL Priority Collateral securing any Term Loan Debt, whether such Lien is now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be (A) junior and subordinate in all respects to all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt, and (B) senior in all respects and prior to any Lien with respect to the ABL Priority Collateral securing any Excess ABL Debt;

(iii) any Lien with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt now or hereafter held by or on behalf of, or created for the benefit of, any of the Term Loan Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be senior in all respects and prior to any Lien with respect to the Term Loan Priority Collateral securing any ABL Debt; and

(iv) any Lien with respect to the Term Loan Priority Collateral securing any ABL Debt now or hereafter held by or on behalf of, or created for the benefit of, any of the ABL Claimholders or any agent or trustee therefor, regardless of how or when acquired, whether by grant, possession, statute, operation of law, subrogation or otherwise, shall be junior and subordinate in all respects to all Liens with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt.

(b) Subject to Section 2.1(c), all Liens with respect to the ABL Priority Collateral securing any ABL Priority Debt shall be and remain senior in all respects and prior to all Liens with respect to the Collateral securing any Term Loan Debt or any Excess ABL Debt, in each case, for all purposes, whether or not such Liens securing any ABL Priority Debt are subordinated to any Lien securing any other obligation of any Grantor or any other person (but only to the extent that such subordination is permitted pursuant to the terms of the ABL Credit Agreement and the Term Loan Credit Agreement, or as contemplated in Section 6.2). Subject to Section 2.1(c), all Liens with respect to the Term Loan Priority Collateral securing any Term Loan Priority Debt shall be and remain senior in all respects and prior to all Liens with respect to the Term Loan Priority Collateral securing any ABL Debt for all purposes, whether or not such Liens securing any Term Loan Priority Debt are subordinated to any Lien securing any other obligation of any Grantor or any other person (but only to the extent that such subordination is permitted pursuant to the terms of the ABL Credit Agreement and the Term Loan Credit Agreement, or as contemplated in Section 6.2).

(c) The foregoing and any other provision to the contrary contained in this Agreement notwithstanding, the subordination of the Liens of Junior Agent provided for in this Agreement shall cease to be effective with respect to any part of the Collateral from and after the date on which the Liens of Priority Agent with respect to such Collateral are declared, or ruled to be, invalid, unenforceable, void or not allowed by a court of competent jurisdiction in a final, non-appealable order (each, a "**Lien Avoidance**") as a result of any (i) action taken by Priority Agent, or any failure by Priority Agent to take any action, with respect to any financing statement (including any amendment to or continuation thereof), mortgage, or other document required to be executed or filed for, or any failure by Priority Agent to take any other action required to establish or maintain the perfection of the Lien of Priority Agent as to such item of the Priority Collateral, or (ii) preferential transfer (within the meaning of Section 547 of the Bankruptcy Code (or similar Bankruptcy Law), fraudulent transfer (within the meaning of Sections 544 or 548 of the Bankruptcy Code (or similar Bankruptcy Law), fraud or other circumstance which results in a Lien Avoidance, in which event the Junior Claimholders shall be entitled to receive and retain, from and after such date, all proceeds with respect to such Collateral to the extent the Liens of Junior Agent are not subject to a Lien Avoidance with respect to such Collateral.

2.2 Prohibition on Contesting Liens or Claims. Each of Term Loan Agent and ABL Agent agrees that it will not (and hereby waives any right to), directly or indirectly (including by or through an affiliate), contest, or support any other person in contesting, in any proceeding (including any Insolvency Proceeding), the extent, validity, attachment, perfection, priority, or enforceability of a Lien held by or on behalf of any of the ABL Claimholders in the Collateral (or the extent, validity, allowability, or enforceability of any ABL Debt secured thereby or purported to be secured thereby) or by or on behalf of any of the Term Loan Claimholders in the

Collateral (or the extent, validity, allowability, or enforceability of any Term Loan Debt secured thereby or purported to be secured thereby), as the case may be, or the provisions of this Agreement; provided, that nothing in this Agreement shall be construed to prevent or impair the rights of ABL Agent or Term Loan Agent to enforce the terms of this Agreement, including the provisions of this Agreement relating to the priority of the Liens securing the ABL Debt and the Term Loan Debt as provided in Sections 2.1 and 3.

### 2.3 New Liens.

(a) So long as no Insolvency Proceeding has been commenced by or against any Grantor, the parties hereto agree that no Grantor shall:

(i) grant or permit any additional Liens on any asset to secure any Term Loan Debt unless such Grantor gives ABL Agent at least 5 Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the ABL Debt concurrently with the grant of a Lien thereon in favor of Term Loan Agent; or

(ii) grant or permit any additional Liens on any asset to secure any ABL Debt unless such Grantor gives Term Loan Agent at least 5 Business Days prior written notice thereof and unless such notice also offers to grant a Lien on such asset to secure the Term Loan Debt concurrently with the grant of a Lien thereon in favor of ABL Agent.

(b) To the extent that the foregoing provisions are not complied with for any reason, without limiting any other rights and remedies available to the Claimholders, each Agent agrees that any amounts received by or distributed to any of the Claimholders pursuant to or as a result of Liens granted in contravention of this Section 2.3 shall be subject to Section 4.2.

### 2.4 Similar Liens and Agreements.

(a) The parties hereto agree that it is their intention that the ABL Collateral and the Term Loan Collateral be identical except as provided in Section 6 hereof and subject to Section 2.4(b) below. In furtherance of the foregoing and of Section 9.8, the parties hereto agree, subject to the other provisions of this Agreement:

(i) upon request by ABL Agent or Term Loan Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the ABL Collateral and the Term Loan Collateral and the steps taken or to be taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the ABL Documents and the Term Loan Documents; and

(i) that the ABL Collateral Documents and Term Loan Collateral Documents and guarantees for the ABL Debt and the Term Loan Debt, shall be, in all material respects, substantially the same in terms of scope of collateral and scope of guarantees, other than with respect to the priorities of the Liens granted thereunder.

(b) The foregoing to the contrary notwithstanding, each of the parties agrees that to the extent that ABL Agent or Term Loan Agent obtains a Lien in an asset (of a type that is not included in the types of assets included in the Collateral as of the date hereof or which would not constitute Collateral without a grant of a Lien separate from the ABL Documents or Term Loan Documents, as applicable, as in effect immediately prior to obtaining such Lien on such asset) which the other party to this Agreement elects not to obtain after receiving prior written notice thereof in accordance with the provisions of Section 2.3, the Collateral securing the ABL Debt and the Term Loan Debt will not be identical, and the provisions of the documents, agreements and instruments evidencing such Liens also will not be substantively similar, and any such difference in the scope or extent of perfection with respect to the Collateral resulting therefrom are hereby expressly permitted by this Agreement.

### **SECTION 3. Exercise of Remedies.**

3.1 Exercise of Remedies with respect to the ABL Priority Collateral. Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, the Term Loan Claimholders will not:

(a) exercise or seek to exercise (and instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived) any rights, powers, or remedies with respect to any ABL Priority Collateral (including taking any Enforcement Action with respect to any ABL Priority Collateral); provided, that (i) if a Term Loan Default has occurred and is continuing, Term Loan Agent may take Enforcement Actions with respect to any ABL Priority Collateral after the expiration of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no Term Loan Default is continuing, Term Loan Agent may not take Enforcement Actions with respect to any ABL Priority Collateral until the expiration of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new Term Loan Default that had not occurred as of the date of the delivery of the earlier Standstill Notice), and (ii) in no event shall Term Loan Agent or any other Term Loan Claimholder exercise any rights or remedies with respect to the ABL Priority Collateral if, notwithstanding the expiration of the Standstill Period, ABL Agent or any other ABL Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by Term Loan Agent with respect to all or any material portion of the ABL Priority Collateral) and be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the ABL Priority Collateral, and (iii) prior to taking any such Enforcement Action, or action to commence or petition for any Insolvency Proceeding after the end of the Standstill Period, Term Loan Agent shall give ABL Agent not more than 20 Business Days and not less than 5 Business Days prior written notice of the intention of Term Loan Agent or any other Term Loan Claimholder to exercise such rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Standstill Period; or

(b) commence or join with any person in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor until 30 days after the date on which Term Loan Agent has given ABL Agent written notice of the intent of Term Loan Claimholders to commence or join with any person in commencing any such action.

3.2 Exercise of Remedies With Respect to the Term Loan Priority Collateral. Until the Payment in Full of the Term Loan Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, ABL Agent will not:

(a) exercise or seek to exercise (and instead shall be deemed to have hereby irrevocably, absolutely and unconditionally waived) any rights, powers, or remedies with respect to any Term Loan Priority Collateral (including taking any Enforcement Action with respect to any Term Loan Priority Collateral) provided, that (i) if an ABL Default has occurred and is continuing, ABL Agent may take Enforcement Actions with respect to any Term Loan Priority Collateral after the expiration of the applicable Standstill Period (it being understood that if at any time after the delivery of a Standstill Notice that commences a Standstill Period, no ABL Default is continuing, ABL Agent may not take Enforcement Actions with respect to any Term Loan Collateral until the expiration of a new Standstill Period commenced by a new Standstill Notice relative to the occurrence of a new ABL Default that had not occurred as of the date of the delivery of the earlier Standstill Notice), and (ii) in no event shall ABL Agent or any other ABL Claimholder exercise any rights or remedies with respect to the Term Loan Collateral if, notwithstanding the expiration of the Standstill Period, Term Loan Agent or any other Term Loan Claimholder shall have commenced prior to the expiration of the Standstill Period (or thereafter but prior to the commencement of any Enforcement Action by ABL Agent with respect to all or any material portion of the Term Loan Priority Collateral) and be diligently pursuing in good faith an Enforcement Action with respect to all or any material portion of the Term Loan Collateral, and (iii) prior to taking any such Enforcement Action, or action to commence or petition for any Insolvency Proceeding after the end of the Standstill Period, ABL Agent shall give Term Loan Agent not more than 20 Business Days and not less than 5 Business Days prior written notice of the intention of ABL Agent or any other ABL Claimholder to exercise such rights and remedies, including specifying the rights and remedies that it intends to exercise, which notice may be sent prior to the end of the Standstill Period; or

(b) commence or join with any person in commencing, or filing a petition for, any Insolvency Proceeding against any Grantor until 30 days after the date on which ABL Agent has given Term Loan Agent written notice of the intent of ABL Claimholders to commence or join with any person in commencing any such action.

3.3 Exclusive Enforcement Rights.

(a) Until the Payment in Full of ABL Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the first proviso to Section 3.1(a), the ABL Claimholders shall have the exclusive right to take Enforcement Actions with respect to the ABL Priority Collateral without any consultation with or the consent of any of the Term Loan Claimholders. Until the Payment in Full of Term Loan Priority Debt has occurred, whether or not any Insolvency Proceeding has been commenced by or against any Grantor, but subject to the first proviso to Section 3.2(a), the Term Loan Claimholders shall have the exclusive right to take Enforcement Actions with respect to the Term Loan Priority Collateral (and in connection therewith, subject to Section 3.9, make determinations regarding the release or Disposition thereof or any restrictions with respect thereto) without any consultation with or the consent of any of the ABL Claimholders.

(b) In connection with (i) any Enforcement Action with respect to the ABL Priority Collateral, the ABL Claimholders may enforce the provisions of the ABL Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion, or (ii) any Enforcement Action with respect to the Term Loan Priority Collateral, the Term Loan Claimholders may enforce the provisions of the Term Loan Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by them to Dispose of Collateral, to incur expenses in connection with such Disposition, and to exercise all the rights and remedies of a secured creditor under applicable law.

3.4 Permitted Actions. Anything to the contrary in this Section 3 notwithstanding, any Claimholder may:

(a) if an Insolvency Proceeding has been commenced by or against any Grantor, file a claim or statement of interest with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Loan Claimholder, the Term Loan Debt, and in each case the Collateral securing such Debt;

(b) take any action (not adverse to the priority status of the Liens on the Priority Collateral held by the Priority Agent with respect thereto, or the rights of the Priority Agent or any other Priority Claimholder to undertake Enforcement Actions with respect thereto) in order to create or perfect its Lien in and to the Collateral;

(c) file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding, or other pleading made by any Person objecting to or otherwise seeking the disallowance of the claims of (i) in the case of a claim of an ABL Claimholder, the ABL Claimholders, or (ii) in the case of a claim of a Term Loan Claimholder, the Term Loan Claimholders, in each case including any claims secured by the Collateral, if any;

(d) vote on any plan of reorganization and make any filings and motions that are, in each case, not in contravention of the provisions of this Agreement, with respect to (i) in the case of an ABL Claimholder, the ABL Debt, and (ii) in the case of a Term Loan Claimholder, the Term Loan Debt, and (in each case) the Collateral;

(e) join (but not exercise any control with respect to) any judicial foreclosure proceeding or other judicial lien enforcement proceeding with respect to the Priority Collateral of the Priority Agent initiated by such Priority Agent to the extent that any such action could not reasonably be expected, in any material respect, to restrain, hinder, limit, delay for any material period or otherwise interfere with an Enforcement Action by such Priority Agent (it being understood that neither the Junior Agent nor any Junior Claimholder shall be entitled to receive any proceeds from the Priority Collateral unless otherwise expressly permitted herein).

3.5 Retention of Proceeds.

(a) Prior to the Payment in Full of ABL Priority Debt, but subject to the provisions of Section 3.5(c) below, the Term Loan Claimholders shall not be permitted to retain



any proceeds of ABL Priority Collateral in connection with any Enforcement Action and any such proceeds received or retained will be subject to Section 4.2.

(b) Prior to the Payment in Full of Term Loan Priority Debt, but subject to the provisions of Section 3.5(c) below, the ABL Claimholders shall not be permitted to retain any proceeds of Term Loan Priority Collateral in connection with any Enforcement Action, and any such proceeds received or retained in any other circumstance will be subject to Section 4.2.

(c) Notwithstanding anything contained in this Agreement to the contrary, in the event of any Permitted Divestiture (as defined in the Term Loan Credit Agreement in effect as of the date hereof), unless otherwise agreed in writing by ABL Agent and Term Loan Agent, the proceeds of any such Disposition of Collateral consisting of Accounts and Inventory (or in the case of a Disposition of Equity Interests issued by a Grantor, any ABL Priority Collateral consisting of Accounts and Inventory in which such Grantor has an interest) shall be allocated to the ABL Priority Collateral (up to the ABL Cap) in an amount equal to the sum of (A) the face amount of such Accounts that at any time had been included in the Stated Borrowing Base and (B) the book value determined in accordance with GAAP, but not less than cost, of such Inventory that at any time had been included in the Stated Borrowing Base, in each case to the extent constituting ABL Priority Collateral, and proceeds in such amount shall be remitted to ABL Agent, free and clear of the Lien of Term Loan Agent, as a mandatory prepayment of the ABL Priority Debt in accordance with Section 6.6(a)(i) of the ABL Credit Agreement (as in effect on the date hereof); provided, however, that in connection with such Permitted Divestitures (other than of the Designated Divestiture Business Unit, as defined in the Term Loan Credit Agreement in effect as of the date hereof), if such a Permitted Divestiture occurs, and the remaining proceeds from all Permitted Divestitures (other than of the Designated Divestiture Business Unit) allocable to Term Loan Priority Collateral, and available as Net Cash Proceeds (as defined in the Term Loan Credit Agreement in effect as of the date hereof) after the allocation to ABL Priority Collateral described above, are less than the amount necessary to prepay \$10,000,000 in principal amount of the Term Loan Debt plus accrued interest payable thereon plus the amount of the Early Payment Fee (as defined in the Term Loan Credit Agreement in effect as of the date hereof) payable in respect thereof, then a Term Loan Default shall occur on the date that is the earlier of (x) the first anniversary of the date hereof, and (y) the date on which all Approved Divestiture Units (as defined in the Term Loan Credit Agreement in effect as of the date hereof) (other than the Designated Divestiture Business Unit) shall have been disposed of pursuant to consummated Permitted Divestitures; provided further, that after such Net Cash Proceeds (as so defined) allocable to the Term Priority Collateral, in an amount necessary to prepay \$10,000,000 in principal amount of the Term Loan Debt plus accrued interest payable thereon plus the amount of the Early Payment Fee payable in respect thereof, are remitted to Term Loan Agent, the next remaining proceeds not to exceed \$5,000,000 shall be remitted to ABL Agent, free and clear of the Lien of Term Loan Agent, as a mandatory prepayment of the ABL Priority Debt in accordance with Section 6.6(a)(i) of the ABL Credit Agreement (as in effect on the date hereof).

(d) Except as otherwise provided with respect to a Permitted Divestiture as set forth in Section 3.5(c) above, in the event of any Disposition or series of related Dispositions that includes (i) the Equity Interests issued by a Grantor that has an interest in ABL Priority Collateral and Term Loan Priority Collateral or (ii) ABL Priority Collateral and Term Loan

Priority Collateral, then solely for purposes of this Agreement and unless otherwise agreed in writing by ABL Agent and Term Loan Agent, the proceeds of any such Disposition of Collateral consisting of Accounts and Inventory (or in the case of a Disposition of Equity Interests issued by a Grantor, any ABL Priority Collateral consisting of Accounts and Inventory in which such Grantor has an interest) shall be allocated to the ABL Priority Collateral (up to the ABL Cap) in an amount not less than the Stated Borrowing Base attributable to such Accounts and Inventory when such Accounts and Inventory constituted "Eligible Accounts" and "Eligible Inventory" (as such terms are defined the ABL Credit Agreement as in effect on the date hereof) whether or not such Accounts and Inventory are included in the Stated Borrowing Base at the time of such Disposition.

3.6 Non-Interference. Subject to any specific provision of this Agreement to the contrary, each of Term Loan Agent and ABL Agent hereby:

(a) agrees that the Junior Claimholders will not take any action that would restrain, hinder, limit, delay, or otherwise interfere with any Enforcement Action taken in compliance with applicable law by the Priority Agent with respect to its Priority Collateral, including any Disposition of such Priority Collateral, whether by foreclosure or otherwise;

(b) waives any and all rights that any Junior Claimholder may have as a junior lien creditor or otherwise to object to the manner in which the Priority Agent or the Priority Claimholders seek to enforce or collect their Debt or, provided such enforcement of Liens is in compliance with applicable law, the Liens securing such Debt granted in any of the Priority Collateral, regardless of whether any action or failure to act by or on behalf of such Priority Agent or the Priority Claimholders is adverse to the interest of the Junior Agent or the Junior Claimholders;

(c) waives any and all rights that any Junior Claimholder may have to oppose, object to, or seek to restrict the Priority Agent or any Priority Claimholder from exercising their rights to set off or credit bid its Debt; and

(d) acknowledges and agrees that no covenant, agreement, or restriction contained in its Collateral Documents or any other of its Loan Documents (other than this Agreement) shall be deemed to restrict in any way the rights and remedies of the Priority Agent or the Priority Claimholders with respect to their Priority Collateral as set forth in this Agreement and such Priority Agent's Loan Documents; provided, that the taking of certain Enforcement Actions or other actions may give rise to a default or event of default under a Loan Document.

3.7 Unsecured Creditor Remedies. Except as set forth in Sections 2.2, 3.1, 3.2, 3.6, and 6, the Agents and the other Claimholders may exercise rights and remedies as unsecured creditors generally against any Grantor in accordance with the terms of the applicable Loan Documents and applicable law so long as doing so is not, directly or indirectly, inconsistent with the terms of this Agreement; provided, that in the event that any Claimholder becomes a judgment Lien creditor in respect of Collateral as a result of its enforcement of its rights as an unsecured creditor with respect to its Debt, such judgment Lien shall be subject to the terms of this Agreement for all purposes as the other Liens securing such Debt.

3.8 [Reserved].

3.9 Inspection and Access Rights.

(a) If any Term Loan Claimholder, or any agent, representative or affiliate of any of the Term Loan Claimholders, or any receiver, shall, after any Term Loan Default, obtain possession or physical control of any of the real properties subject to a Mortgage, or any of the tangible Term Loan Priority Collateral located on any premises or control over any intangible Term Loan Priority Collateral, Term Loan Agent shall promptly notify ABL Agent in writing of that fact, and ABL Agent may at any time thereafter notify Term Loan Agent in writing if and when ABL Agent desires to exercise its access rights under this Section 3.9. In addition, if ABL Agent, or any agent, representative or affiliate of ABL Agent, or any receiver, shall obtain possession or physical control of any of the real properties subject to a Mortgage, or any of the tangible Term Loan Priority Collateral or control over any intangible Term Loan Priority Collateral, following the delivery to Term Loan Agent of an Enforcement Notice, then ABL Agent may at any time thereafter notify Term Loan Agent in writing that ABL Agent is exercising its access rights under this Agreement under either circumstance. Upon delivery of such notice by ABL Agent to Term Loan Agent, the parties shall confer in good faith to coordinate with respect to ABL Agent's exercise of such access rights. Consistent with the definition of "Use Period," access rights may apply to differing parcels of real properties subject to a Mortgage and to different assets that constitute a portion of the Term Loan Priority Collateral, in each case at differing times, in which case, a differing Use Period will apply to each such property and to each such portion of the Term Loan Priority Collateral.

(b) Without limiting any rights any of the ABL Claimholders may otherwise have under applicable law or by agreement and whether or not any of the Term Loan Claimholders has commenced and is continuing to undertake any Enforcement Action, ABL Agent or any other person (including any of the ABL Claimholders) acting with the consent, or on behalf, of ABL Agent, shall have an irrevocable, non-exclusive right to have access to, and a royalty-free and rent-free license and right to use the Term Loan Priority Collateral (including, without limitation, equipment, fixtures, Intellectual Property, general intangibles and real property and equipment, processors, computers and other machinery related to the storage or processing of records, documents or files) during the Use Period (i) during normal business hours on any Business Day, to access the ABL Priority Collateral that (A) is stored or located in or on, (B) has become an accession with respect to (within the meaning of Section 9-335 of the UCC), or (C) has been commingled with (within the meaning of Section 9-336 of the UCC), Term Loan Priority Collateral, and (ii) in order to assemble, inspect, copy or download information stored on, take actions to perfect its Lien on, process raw materials or work-in-process into finished Inventory, take possession of, move, package, prepare and advertise for sale or disposition, sell (by public auction, private sale or a "store closing," "going out of business" or similar sale, whether in bulk, in lots or to customers in the ordinary course of business or otherwise and which sale may include augmented Inventory of the same type sold in Grantors' business), store, collect, take reasonable actions to protect, secure and otherwise enforce the rights of ABL Agent in and to the ABL Priority Collateral, or otherwise deal with the ABL Priority Collateral, in each case without the involvement of or interference by any of the Term Loan Claimholders or liability to any of the Term Loan Claimholders, except as provided in Section 3.9(c). This Agreement will not restrict the rights of Term Loan Agent to sell, assign or

otherwise transfer the related Term Loan Priority Collateral prior to the expiration of the Use Period if (but only if) the purchaser, assignee or transferee thereof agrees to be bound by the provisions of this Section 3.9.

(c) During the period of actual occupation, use or control by ABL Agent (or its respective employees, agents, advisers and representatives) of any Term Loan Priority Collateral, ABL Agent shall, and shall be obligated to, (i) repair at their expense any physical damage (ordinary wear and tear excepted) to such Term Loan Priority Collateral caused by such occupancy, use or control by ABL Agent or its agents, representatives or designees, and to leave such Term Loan Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control, ordinary wear and tear excepted, (ii) pay any third-party expenses directly related thereto, including incremental costs with respect to heat, light, electricity, water, security, maintenance and other items with respect to that portion of any premises so used or occupied, or that arise as a result of such use, to the extent such costs would not have been incurred but for the Use Period and the exercise of ABL Agent's rights under this Section 3.9, and (iii) ABL Agent shall indemnify Term Loan Claimholders on demand for all costs (including attorneys' fees and disbursements), losses, damages and liabilities incurred by any of them as a result of such occupancy, use or control, including damage to Term Loan Priority Collateral (subject to ordinary wear and tear as contemplated herein) and including all losses, damages and liabilities so incurred to the extent arising from any claim by a third party against such Term Loan Claimholders as determined by a final order of a court of competent jurisdiction to be the direct result of or attributable to any action by ABL Agent (or its representatives) pursuant to the exercise of its rights of access and the use under Section 3.9 and so long as such loss, damage and/or liability is not caused by the negligent acts or willful misconduct of any Term Loan Claimholder as determined by a final order of a court of competent jurisdiction (such indemnification payments to be subject to indemnification by the Grantors to the extent provided in the ABL Credit Agreement and to constitute ABL Priority Debt for all purposes hereunder); provided, that ABL Agent will not be liable for any diminution in the value of the Term Loan Priority Collateral caused by the absence of the ABL Priority Collateral therefrom. Notwithstanding the foregoing, in no event shall ABL Agent have any liability to any of the Term Loan Claimholders pursuant to this Section 3.9 as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by ABL Agent of its rights under this Section 3.9 and ABL Agent shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by ABL Agent, or for any diminution in the value of the Term Loan Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Term Loan Priority Collateral by ABL Agent in the manner and for the time periods specified under this Section 3.9 and subject to the terms hereof. Without limiting the rights granted in this Section 3.9, ABL Agent shall use commercially reasonable efforts to cooperate with Term Loan Agent in connection with any efforts made by the Term Loan Claimholders to sell the Term Loan Priority Collateral, without the involvement of or interference by any of the ABL Claimholders or liability to any of the ABL Claimholders, except as provided in Section 3.9(c).

(d) Consistent with the definition of the term "Use Period," if any order or injunction is issued or stay is granted or is otherwise effective by operation of law that prohibits

ABL Agent from exercising any of its rights hereunder, then the Use Period granted to ABL Agent under this Section 3.9 shall be stayed during the period of such prohibition and shall continue thereafter for the number of days remaining as required under this Section 3.9. Term Loan Agent agrees, for the benefit of ABL Agent, that it shall not sell or dispose of any of the Term Loan Priority Collateral during the Use Period unless the buyer agrees in writing to acquire the Term Loan Priority Collateral subject to the terms of Section 3.9 of this Agreement and agrees therein to comply with the terms of this Section 3.9. The rights of ABL Agent under this Section 3.9 during the Use Period shall continue notwithstanding such foreclosure, sale or other disposition by Term Loan Agent.

(e) ABL Agent shall not be obligated to pay any amounts to the Term Loan Claimholders (or any Person claiming by, through or under the Term Loan Claimholders, including any purchaser of the Term Loan Priority Collateral) or to any Grantor, for or in respect of the use by ABL Agent of the Term Loan Priority Collateral, except as set forth in Section 3.9(c) and Section 3.9(g). In each case, all amounts paid by ABL Agent hereunder shall be added to the outstanding principal balance of the ABL Debt.

(f) ABL Agent shall use the Term Loan Priority Collateral pursuant to this Section 3.9 in accordance with applicable law and in a commercially reasonable manner.

(g) The Term Loan Agent (i) will cooperate with ABL Agent, at the sole cost and expense of the ABL Agent (subject to indemnification by the Grantors as ABL Debt) in its efforts pursuant to Section 3.9(b) to enforce its security interest in the ABL Priority Collateral and to finish any work-in-process and assemble the ABL Priority Collateral, (ii) will not hinder or restrict in any respect ABL Agent from enforcing its security interest in the ABL Priority Collateral or from finishing any work-in-process or assembling the ABL Priority Collateral pursuant to Section 3.9(b) in accordance with this Agreement, subject, however to the terms and conditions of this Agreement, and (iii) will, subject to the rights of any landlords under real estate leases and other third parties having relevant rights, permit ABL Agent, its employees, agents, advisers and representatives to exercise the rights described in Section 3.9(b) subject to the terms and conditions of this Agreement.

(h) Subject to the terms hereof, Term Loan Agent may advertise and conduct public auctions or private sales of the Term Loan Priority Collateral, without the involvement of, or interference by, any of the ABL Claimholders or liability to any of the ABL Claimholders as long as, in the case of an actual sale, the respective purchaser assumes and agrees in advance in writing to the obligations of Term Loan Agent under this Section 3.9. If ABL Agent conducts a public auction or private sale of the ABL Priority Collateral at any of the real property included within the Term Loan Priority Collateral, ABL Agent shall provide Term Loan Agent with reasonable prior notice of such sale and shall use reasonable efforts to hold such auction or sale in a manner which would not unduly disrupt Term Loan Agent's use of such real property.

(i) For the avoidance of doubt, and without limiting the generality of the other provisions of this Agreement, it is hereby acknowledged and agreed that ABL Agent shall have the right to bring an action to enforce its rights under this Section 3.9 and Section 3.10, including an action seeking possession of the applicable Collateral (subject to and on the terms and conditions of this Agreement) or specific performance of this Section 3.9 and Section 3.10,

and Term Loan Agent shall have the right to bring an action to enforce its rights under this Section 3.9 and Section 3.10, including an action seeking recovery of indemnities, expense reimbursement and other amounts owing under Section 3.9 and Section 3.10.

3.10 Sharing of Information and Access. In the event that ABL Agent shall, in the exercise of its rights under the ABL Collateral Documents or otherwise, receive possession or control of any Books of any Grantor which contain information identifying or pertaining to any of the Term Loan Priority Collateral, ABL Agent shall, upon request from Term Loan Agent and as promptly as practicable thereafter, either make available to Term Loan Agent such books and records for inspection and duplication or provide to Term Loan Agent copies thereof. In the event that Term Loan Agent shall, in the exercise of its rights under the Term Loan Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the ABL Priority Collateral, Term Loan Agent shall, upon request from ABL Agent and as promptly as practicable thereafter, either make available to ABL Agent such books and records for inspection and duplication or provide to ABL Agent copies thereof.

3.11 Tracing of and Priorities in Proceeds. Prior to commencement of an Enforcement Period by a Claimholder (unless a bankruptcy or insolvency ABL Default or Term Loan Default then exists), any proceeds of Collateral obtained in accordance with the terms of the ABL Documents and the Term Loan Documents, whether or not deposited under control agreements, which are used by any Grantor to acquire other property which is Collateral shall not (solely as between the Claimholders) be treated as proceeds of Collateral for purposes of determining the relative priorities in the Collateral which was so acquired, excluding for such purposes Collateral so acquired after ABL Agent's receipt of any Term Cash Proceeds Notice to the extent the amount of such proceeds is reasonably identified in such Term Cash Proceeds Notice. Notwithstanding anything to the contrary contained in this Agreement, any Term Loan Document or any ABL Document, until the Payment in Full of ABL Priority Debt occurs Term Loan Agent, for itself and on behalf of the Term Claimholders, agrees that (i) it is the intention of the parties that only Term Loan Priority Collateral or proceeds thereof shall be deposited in the Term Loan Priority Collateral Deposit Account and (ii) prior to the receipt of a Term Cash Proceeds Notice, and except with respect to Term Loan Priority Collateral, or proceeds thereof reasonably identified in a Term Cash Proceeds Notice, the ABL Claimholders are hereby permitted to treat all cash, cash equivalents, Money, collections and payments deposited in or credited to any other Grantor's deposit account, collection account or other bank account or otherwise received by any ABL Claimholders as ABL Priority Collateral, and except as otherwise provided above, no such amounts deposited in or credited to any such accounts (other than the Term Loan Priority Collateral Deposit Account) or received by any ABL Claimholders or applied to the ABL Debt shall be subject to disgorgement or deemed to be held in trust for the benefit of the Term Loan Claimholders (and all claims of the Term Loan Agent or any other Term Loan Claimholders to such amounts are hereby waived); provided, that any identifiable cash proceeds of specific Term Loan Priority Collateral identified in any Term Cash Proceeds Notice which are so deposited or otherwise received by any ABL Claimholder shall remain Term Loan Priority Collateral and shall be subject to Section 4.2(c); and provided further, however, that this consent shall not inure to the benefit of any of the Grantors or be deemed a waiver of or modification of any provision of the Term Loan Documents, including any provision requiring application of such proceeds to repayment of the Term Loan Debt or otherwise in the manner

provided for in the Term Loan Documents or any default or event of default that may result from any Grantor's failure to comply with such requirements.

#### SECTION 4. Proceeds.

##### 4.1 Application of Proceeds.

(a) Regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, except as otherwise provided in Section 2.1, any ABL Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action and, except as otherwise provided in Sections 6.5 and 6.9(c), any ABL Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien in such Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such ABL Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) first, to the payment in full in cash of costs and expenses of ABL Agent in connection with such Enforcement Action or Insolvency Proceeding,

(ii) second, to the payment in full in cash or cash collateralization of the ABL Priority Debt in accordance with the ABL Documents, and in the case of payment of any revolving loans (other than pursuant to ABL DIP Financing), together with a concurrent permanent reduction of the ABL Priority Debt,

(iii) third, to the payment in full in cash of costs and expenses of Term Loan Agent in connection with such Enforcement Action or Insolvency Proceeding (to the extent Term Loan Agent's Enforcement Action or action in the Insolvency Proceeding was permitted hereunder),

(iv) fourth, to the payment in full in cash of the Term Loan Priority Debt in accordance with the Term Loan Documents, and

(v) fifth, to the payment in full in cash of the Excess ABL Debt in accordance with the ABL Documents.

(b) Notwithstanding the foregoing, if any Enforcement Action with respect to the ABL Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by ABL Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. ABL Agent shall have no duty or obligation to Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; provided, that any non-cash proceeds received by ABL Agent (other than any non-cash proceeds received on account of any Term Loan Secured Claim) may be distributed by ABL Agent to the ABL Claimholders in full or partial satisfaction of ABL Debt in an amount determined by ABL Agent acting at the direction of the requisite ABL Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding. No receipt and application of any Collateral, or proceeds thereof, received in the ordinary course of business (such Collateral, and the proceeds thereof, "**Ordinary Course Collections**") shall constitute an Enforcement Action for purposes of this Agreement

and all Ordinary Course Collections received by ABL Agent may be applied, reversed, reapplied, credited, or reborrowed, in whole or in part, pursuant to the ABL Credit Agreement; provided, however, that this provision shall not inure to the benefit of any of the Grantors or be deemed a waiver of or modification of any provision of the Term Loan Documents, including any provision requiring application of such proceeds to repayment of the Term Loan Debt or otherwise in the manner provided for in the Term Loan Documents or any default or event of default that may result from any Grantor's failure to comply with such requirements.

(c) Regardless of whether an Insolvency Proceeding has been commenced by or against any Grantor, except as otherwise provided in Section 2.1, any Term Loan Priority Collateral, or proceeds thereof, received in connection with any Enforcement Action and, except as otherwise provided in Sections 6.5 and 6.9(c), any Term Loan Priority Collateral or proceeds thereof (or amounts distributed on account of a Lien in such Collateral or the proceeds thereof) received in connection with any Insolvency Proceeding involving a Grantor shall (at such time as such Term Loan Priority Collateral or proceeds or other amounts have been monetized) be applied:

(i) first, to the payment in full in cash of costs and expenses of Term Loan Agent in connection with such Enforcement Action or Insolvency Proceeding,

(ii) second, to the payment in full in cash of the Term Loan Priority Debt in accordance with the Term Loan Documents,

(iii) third, to the payment in full in cash of costs and expenses of ABL Agent in connection with such Enforcement Action or Insolvency Proceeding (to the extent ABL Agent's Enforcement Action or action in the Insolvency Proceeding was permitted hereunder),

(iv) fourth, to the payment in full in cash of the ABL Priority Debt in accordance with the ABL Documents, and

(v) fifth, to the payment in full in cash of the Excess ABL Debt in accordance with the ABL Documents.

(d) Notwithstanding the foregoing, if any Enforcement Action with respect to the Term Loan Priority Collateral produces non-cash proceeds, then such non-cash proceeds shall be held by Term Loan Agent as additional collateral and, at such time as such non-cash proceeds are monetized, shall be applied in the order of application set forth above. Term Loan Agent shall have no duty or obligation to Dispose of such non-cash proceeds and may Dispose of such non-cash proceeds or continue to hold such non-cash proceeds, in each case, in its discretion; provided, that any non-cash proceeds received by Term Loan Agent (other than any non-cash proceeds received on account of any ABL Secured Claim) may be distributed by Term Loan Agent to the Term Loan Claimholders in full or partial satisfaction of Term Loan Debt in an amount determined by Term Loan Agent acting at the direction of the requisite Term Loan Claimholders or as a court of competent jurisdiction may direct pursuant to a Final Order, including an order confirming a plan of reorganization in an Insolvency Proceeding.

#### 4.2 Turnover.



(a) Unless and until the Payment in Full of ABL Priority Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), except as otherwise provided in Section 2.1 and Section 4.2(b), any ABL Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3) received by any of the Term Loan Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the Term Loan Claimholders, or (ii) as a result of any Term Loan Claimholder's collusion with any Grantor in violating the rights of the ABL Claimholders (within the meaning of Section 9-332 of the UCC), shall be segregated and held in trust and forthwith paid over to ABL Agent in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided, that in the case of any other proceeds of ABL Priority Collateral not governed by clauses (i) or (ii) above received by any Term Loan Claimholders in connection with a Disposition of ABL Priority Collateral by any Grantor, if neither any Grantor nor any ABL Claimholder provides written notice of such Disposition to Term Loan Agent within 90 days after such Disposition specifying the amount and source of such proceeds, no Term Loan Claimholder shall have any obligation to pay over any proceeds of such Disposition to ABL Agent except as otherwise provided by Section 3.11. ABL Agent is hereby authorized to make any such endorsements as agent for the Term Loan Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of ABL Priority Debt.

(b) Unless and until the Payment in Full of ABL Priority Debt has occurred and except as otherwise expressly provided in Sections 2.1(c), 6.5 or 6.9, if a Grantor (or any of its assets) is the subject of an Insolvency Proceeding and if any distribution is received by the Term Loan Claimholders (or any of them) on account of their Term Loan Secured Claims in respect of their interest in the ABL Priority Collateral in connection with such Insolvency Proceeding (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders or otherwise provides for the Payment in Full of ABL Priority Debt), then, except as set forth below, such distribution shall be segregated and held in trust and forthwith paid over to ABL Agent for the benefit of the ABL Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided that, notwithstanding the foregoing, Term Loan Claimholders shall be entitled to receive and retain (i) any indebtedness of any reorganized Grantor received in connection with or pursuant to any confirmed plan of reorganization provided that if such indebtedness is secured by a Lien on any property of a character that would be included in the definition of ABL Priority Collateral, any indebtedness of such Grantor held or received by ABL Claimholders shall be secured by a Lien on such property that is prior to the Lien securing such indebtedness so received by any Term Loan Claimholder to the same degree and on terms and conditions governing priority and rights in such collateral that are substantially identical to those set forth herein, and (ii) so long as Term Loan Agent has released its Lien in any ABL Priority Collateral in connection with or pursuant to such confirmed plan, any Equity Interests in any Grantor received in connection with or pursuant to any confirmed plan of reorganization on account of Term Loan Secured Claims in respect of ABL Priority Collateral. ABL Agent is hereby authorized to make any such endorsements as agent for the Term Loan Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of ABL Priority Debt.

(c) Unless and until the Payment in Full of Term Loan Priority Debt has occurred (irrespective of whether any Insolvency Proceeding has been commenced by or against any Grantor), except as otherwise provided in Section 2.1 and Section 4.2(d), any Term Loan Priority Collateral, or proceeds thereof (including assets or proceeds subject to Liens referred to in the final sentence of Section 2.3 received by any of the ABL Claimholders (i) in connection with an Enforcement Action with respect to the Collateral by any of the ABL Claimholders, or (ii) as a result of any ABL Claimholder's collusion with any Grantor in violating the rights of Term Loan Agent or any of the Term Loan Claimholders (within the meaning of Section 9-332 of the UCC), shall be segregated and held in trust and forthwith paid over to Term Loan Agent for the benefit of the Term Loan Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided, that in the case of any proceeds of Term Loan Priority Collateral received by any of the ABL Claimholders in connection with a Disposition of Term Loan Priority Collateral by any Grantor, if a Grantor does not provide prior written notice of such Disposition to ABL Agent specifying the amount and source of such proceeds, no ABL Claimholder shall have any obligation to pay over any proceeds of such Disposition to Term Loan Agent. Term Loan Agent is hereby authorized to make any such endorsements as agent for the ABL Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of the Term Loan Priority Debt.

(d) Unless and until the Payment in Full of Term Loan Priority Debt has occurred and except as otherwise expressly provided in Sections 2.1(c), 6.5 or 6.9, if a Grantor (or any of its assets) is the subject of an Insolvency Proceeding and if any distribution is received by the ABL Claimholders (or any of them) on account of their ABL Secured Claims in respect of their interest in the Term Loan Priority Collateral in connection with such Insolvency Proceeding (unless such distribution is made under a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Loan Claimholders or otherwise provides for the Payment in Full of Term Loan Priority Debt), then, such distribution shall be segregated and held in trust and forthwith paid over to Term Loan Agent for the benefit of the Term Loan Claimholders in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct; provided that, notwithstanding the foregoing, ABL Claimholders shall be entitled to receive and retain (i) any indebtedness of any reorganized Grantor received in connection with or pursuant to any confirmed plan of reorganization provided that if such indebtedness is secured by a Lien on any property of a character that would be included in the definition of Term Loan Priority Collateral, any indebtedness of such Grantor held or received by Term Loan Claimholders shall be secured by a Lien on such property that is prior to the Lien securing such indebtedness so received by any ABL Claimholder to the same degree and on terms and conditions governing priority and rights in such collateral that are substantially identical to those set forth herein, and (ii) so long as ABL Agent has released its Lien in any Term Loan Priority Collateral in connection with or pursuant to such confirmed plan, any Equity Interests in any Grantor received in connection with or pursuant to any confirmed plan of reorganization on account of ABL Secured Claims in respect of Term Loan Priority Collateral. Term Loan Agent is hereby authorized to make any such endorsements as agent for the ABL Claimholders and this authorization is coupled with an interest and is irrevocable until the Payment in Full of Term Loan Priority Debt.

(e) Term Loan Agent agrees that if, at any time, all or part of any payment with respect to any ABL Debt secured by any ABL Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to ABL Agent any payment received by it in respect of any such ABL Priority Collateral and shall promptly turn any such ABL Priority Collateral then held by it over to ABL Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such ABL Debt.

(f) ABL Agent agrees that if, at any time, all or part of any payment with respect to any Term Loan Debt secured by any Term Loan Priority Collateral previously made shall be rescinded for any reason whatsoever, it will upon request promptly pay over to Term Loan Agent any payment received by it in respect of any such Term Loan Priority Collateral and shall promptly turn any such Term Loan Priority Collateral then held by it over to Term Loan Agent, and the provisions set forth in this Agreement will be reinstated as if such payment had not been made, until the payment and satisfaction in full of such Term Loan Debt.

4.3 No Subordination of the Relative Priority of Claims. Anything to the contrary contained herein notwithstanding, the subordination of the Liens of the Term Loan Claimholders in respect of the ABL Priority Collateral to the Liens of the ABL Claimholders therein and of the Liens of the ABL Claimholders in respect of the Term Loan Priority Collateral to the Liens of the Term Loan Claimholders therein as set forth herein is with respect to the priority of their respective Liens in and to the Collateral held by or on behalf of them only and shall not constitute a subordination in right of payment of the Term Loan Debt to the ABL Debt or a subordination in right of payment of the ABL Debt to the Term Loan Debt.

4.4 Non-Lienable Assets. Notwithstanding anything to the contrary contained herein (including Section 4.3), if any assets, licenses, rights, or privileges of any Grantor are incapable of being the subject of a Lien in favor of a secured party (including because of restrictions under applicable law, the nature of the rights or interests of such Grantor, or the absence of a consent to such Lien by a third party and irrespective of whether the applicable collateral documents attempt (or purport) to encumber such assets, licenses, rights, or privileges (the "**Inalienable Interests**")), then ABL Agent and Term Loan Agent agree that any distribution or recovery that the ABL Claimholders or the Term Loan Claimholders may receive with respect to, or that is allocable to, the value of any such Inalienable Interests, or any proceeds thereof, whether received in their capacity as unsecured creditors or otherwise, shall be turned over and applied in accordance with Section 4.1 and 4.2 as if such distribution or recovery were, or were on account of, Collateral or the proceeds of Collateral. With respect to Inalienable Interests that would be of the same type as the ABL Priority Collateral if such Inalienable Interests were able to be included in the Collateral, until the Payment in Full of ABL Priority Debt occurs, Term Loan Agent hereby appoints ABL Agent, and any officer or agent of ABL Agent, with full power of substitution, as the attorney-in-fact of each of the Term Loan Claimholders for the limited purpose of carrying out the provisions of this Section 4.4 and taking any action and executing any instrument that ABL Agent may reasonably deem necessary or advisable to accomplish the purposes of this Section 4.4, which appointment is irrevocable and coupled with an interest. With respect to Inalienable Interests that would be of the same type as the Term Loan Priority Collateral if such Inalienable Interests were able to be included in the Collateral, until the Payment in Full of Term Loan Priority Debt occurs, ABL Agent hereby appoints Term Loan

Agent, and any officer or agent of Term Loan Agent, with full power of substitution, the attorney-in-fact of each of the ABL Claimholders for the limited purpose of carrying out the provisions of this Section 4.4 and taking any action and executing any instrument that Term Loan Agent may reasonably deem necessary or advisable to accomplish the purposes of this Section 4.4, which appointment is irrevocable and coupled with an interest.

4.5 Prepayments. Without the prior written consent of ABL Agent, no Term Loan Claimholder will take, demand, or receive from any Grantor any voluntary prepayment of principal of "Term Loans" (as defined in the Term Loan Credit Agreement) made from ABL Priority Collateral or from any proceeds of ABL Debt. Notwithstanding anything herein to the contrary, the ABL Agent, on behalf of itself and the other ABL Claimholders, and the Term Loan Agent, on behalf of itself and the other Term Loan Claimholders, agree that mandatory prepayments of Term Loan Debt required under the Term Loan Credit Agreement may be made with (i) 100% of the net proceeds of any "Debt" (as defined in the Term Loan Credit Agreement) incurred to Refinance the Term Loan Debt, (ii) 50% of the net proceeds of any other "Debt" (as so defined) incurred by any Grantor (other than purchase money Debt the proceeds of which are applied to the purchase price of the property financed and other than ABL Debt), (iii) 50% of the net proceeds of any issuance of "Equity Interests" (as defined in the Term Loan Credit Agreement) to a person other than a Grantor (in each case in clauses (ii) and (iii) above, other than proceeds used to refinance the "2011 Convertible Subordinated Debentures" (as defined in the Term Loan Credit Agreement)), (iv) subject to Section 3.5(c) and Section 3.5(d), 100% of "Extraordinary Receipts" (as defined in the Term Loan Credit Agreement) to the extent directly attributable to or received in respect of the Term Loan Priority Collateral, (v) 0% of all "Extraordinary Receipts" (as so defined) to the extent directly attributable to or received in respect of ABL Priority Collateral prior to Payment in Full of ABL Priority Debt, and 100% of all "Extraordinary Receipts" (as so defined) to the extent directly attributable to or received in respect of ABL Priority Collateral after Payment in Full of ABL Priority Debt, (vi) 50% of all other "Extraordinary Receipts" (as so defined), (vii) 50% of the proceeds of business interruption insurance, (viii) 100% of the proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case to the extent directly attributable to or received in respect of the Term Loan Priority Collateral, (ix) 0% of the proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case to the extent directly attributable to or received in respect of ABL Priority Collateral (calculated as determined in Section 5.2) prior to Payment in Full of ABL Priority Debt, and 100% of the proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case to the extent directly attributable to or received in respect of ABL Priority Collateral (calculated as determined in Section 5.2) after Payment in Full of ABL Priority Debt, (x) subject to Section 3.5(c) and Section 3.5(d), 100% of the proceeds of Term Loan Priority Collateral, and (xi) subject to Section 6.8, 100% of all other proceeds of ABL Priority Collateral received after Payment in Full of ABL Priority Debt. If any prepayments in respect of the Term Loan Debt not permitted above are received by one or more of the Term Loan Claimholders at any time before the Payment in Full of the ABL Priority Debt, they shall be forthwith paid over to ABL Agent for deposit by the ABL Agent in the relevant Grantor's operating deposit account.

4.6 Application of Payments. Subject to the other terms of this Agreement, all payments received (not in violation of this Agreement) by (a) the ABL Claimholders may be applied, reversed, and reapplied, in whole or in part, to the ABL Debt to the extent provided for in the ABL Documents, and (b) the Term Loan Claimholders may be applied, reversed, and reapplied, in whole or in part, to the Term Loan Debt to the extent provided for in the Term Loan Documents.

4.7 Revolving Nature of ABL Debt. Term Loan Agent, acknowledges and agrees that the ABL Credit Agreement includes a revolving commitment and that the amount of the ABL Debt that may be outstanding at any time or from time to time may be increased or reduced and subsequently reborrowed.

## **SECTION 5. Releases; Dispositions; Other Agreements.**

### **5.1 Releases.**

(a) ABL Agent shall have the exclusive right to make determinations regarding the release or Disposition of any ABL Priority Collateral pursuant to the terms of the ABL Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to any of the Term Loan Claimholders.

(b) Term Loan Agent shall have the exclusive right to make determinations regarding the release or Disposition of any Term Loan Priority Collateral pursuant to the terms of the Term Loan Documents or in accordance with the provisions of this Agreement, in each case without any consultation with, consent of, or notice to any of the ABL Claimholders.

(c) If, in connection with a Disposition pursuant to any Enforcement Action by ABL Agent as provided for in Section 3, ABL Agent releases any of its Liens on any part of the ABL Priority Collateral (or such Liens are released by operation of law), then, provided that all of the proceeds of such Disposition are applied to permanently repay the ABL Priority Debt and, in the case of repayment of principal, reduce any existing commitment to lend under the ABL Documents by an equal amount, the Liens of Term Loan Agent on such ABL Priority Collateral, shall be automatically, unconditionally, and simultaneously released.

(d) If, in connection with a Disposition pursuant to any Enforcement Action by Term Loan Agent as provided for in Section 3, Term Loan Agent releases any of its Liens on any part of the Term Loan Priority Collateral (or such Liens are released by operation of law), then, provided that all of the proceeds of such Disposition are applied to permanently repay the Term Loan Priority Debt, the Liens of ABL Agent on such Term Loan Priority Collateral, shall be automatically, unconditionally, and simultaneously released.

(e) If, in connection with any Disposition of any ABL Priority Collateral permitted under the terms of the ABL Documents and the Term Loan Documents as in effect as of the date hereof, ABL Agent releases any of its Liens on the portion of the ABL Priority Collateral that is the subject of such Disposition, other than (i) in connection with an Enforcement Action or the Payment in Full of ABL Priority Debt, or (ii) after the occurrence and during the continuance of any Term Loan Default, then the Liens of Term Loan Agent on such ABL Priority Collateral shall be automatically, unconditionally, and simultaneously released.

(f) If, in connection with any Disposition of any Term Loan Priority Collateral permitted under the terms of the Term Loan Documents and the ABL Documents as in effect as of the date hereof, Term Loan Agent releases any of its Liens on the portion of the Term Loan Priority Collateral that is the subject of such Disposition, other than (i) in connection with an Enforcement Action or the Payment in Full of Term Loan Priority Debt, or (ii) after the occurrence and during the continuance of any ABL Default, then the Liens of ABL Agent on such Term Loan Priority Collateral shall be automatically, unconditionally, and simultaneously released.

(g) In the event of any private or public Disposition of all or any material portion of the ABL Priority Collateral by one or more Grantors with the consent of ABL Agent after the occurrence and during the continuance of an ABL Default (and prior to the Payment in Full of ABL Priority Debt), which Disposition is conducted by such Grantors with the consent of ABL Agent in connection with good faith efforts by ABL Agent to collect the ABL Debt through the Disposition of ABL Priority Collateral (any such Disposition, an "**ABL Default Disposition**"), then the Liens of Term Loan Agent on such ABL Priority Collateral shall be automatically, unconditionally, and simultaneously released so long as (i) ABL Agent also releases its Liens on such ABL Priority Collateral, and (ii) the net cash proceeds of any such ABL Default Disposition are applied in accordance with Section 4.1(a) (as if they were proceeds received in connection with an Enforcement Action) and any commitment to lend under the ABL Documents, if in effect, is permanently reduced by the amount so applied to repay principal.

(h) In the event of any private or public Disposition of all or any material portion of the Term Loan Priority Collateral by one or more Grantors with the consent of Term Loan Agent after the occurrence and during the continuance of a Term Loan Default (and prior to the Payment in Full of Term Loan Priority Debt), which Disposition is conducted by such Grantors with the consent of Term Loan Agent in connection with good faith efforts by Term Loan Agent to collect the Term Loan Debt through the Disposition of Term Loan Priority Collateral (any such Disposition, a "**Term Loan Default Disposition**"), then the Liens of ABL Agent on such Term Loan Priority Collateral shall be automatically, unconditionally, and simultaneously released so long as (i) Term Loan Agent also releases its Liens on such Term Loan Priority Collateral, and (ii) the net cash proceeds of any such Term Loan Default Disposition are applied in accordance with Section 4.1(c) (as if they were proceeds received in connection with an Enforcement Action).

(i) To the extent that the Liens of Term Loan Agent in and to any ABL Priority Collateral are to be released as provided in this Section 5.1,

(i) Term Loan Agent shall promptly, upon the written request of ABL Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as ABL Agent may reasonably require in connection with such Disposition to evidence and effectuate such release; provided, that any such release or UCC amendment by Term Loan Agent shall not extend to or otherwise affect any of the rights, if any, of Term Loan Agent to the proceeds from any such Disposition of any Collateral,

(ii) from and after the time that the Liens of the Term Loan Agent in and to such Term Loan Priority Collateral are released, Term Loan Agent shall be automatically and irrevocably deemed to have authorized ABL Agent to file UCC amendments releasing only the ABL Priority Collateral subject to such Disposition,

(iii) the Term Loan Claimholders shall be deemed to have consented under the Term Loan Documents to any such Disposition in connection with an Enforcement Action by the ABL Agent or an ABL Default Disposition to the same extent as the consent of the ABL Claimholders, and

(iv) in accordance with the provisions of applicable law, the Liens of Term Loan Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition until used to repay ABL Debt.

(j) To the extent that the Liens of ABL Agent in and to any Term Loan Priority Collateral are to be released as provided in this Section 5.1,

(i) ABL Agent shall promptly, upon the written request of Term Loan Agent, execute and deliver such release documents and confirmations of the authorization to file UCC amendments, in each case, as Term Loan Agent may reasonably require in connection with such Disposition to evidence and effectuate such release; provided, that any such release or UCC amendment by ABL Agent shall not extend to or otherwise affect any of the rights, if any, of ABL Agent to the proceeds from any such Disposition of any Collateral,

(ii) from and after the time that the Liens of the ABL Agent in and to such ABL Priority Collateral are released, ABL Agent shall be automatically and irrevocably deemed to have authorized Term Loan Agent to file UCC amendments releasing only the Term Loan Priority Collateral subject to such Disposition,

(iii) ABL Agent shall be deemed to have consented under the ABL Documents to any such Disposition in connection with an Enforcement Action by the Term Loan Agent or a Term Loan Default Disposition to the same extent as the consent of the Term Loan Claimholders, and

(iv) in accordance with the provisions of applicable law, the Liens of ABL Agent shall automatically attach to any proceeds of any Collateral subject to any such Disposition until used to repay Term Loan Debt.

(k) Until the Payment in Full of ABL Priority Debt occurs, Term Loan Agent hereby irrevocably constitutes and appoints ABL Agent and any officer or agent of ABL Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of Term Loan Agent or in ABL Agent's own name, from time to time in ABL Agent's discretion, solely for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the ABL Priority Collateral for such purpose and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC3) or any other endorsements or other instruments

of transfer or release with respect to the relevant ABL Priority Collateral required for such purpose.

(l) Until the Payment in Full of Term Loan Priority Debt occurs, ABL Agent hereby irrevocably constitutes and appoints Term Loan Agent and any officer or agent of Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of ABL Agent or such holder or in Term Loan Agent's own name, from time to time in Term Loan Agent's discretion, solely for the purpose of carrying out the terms of this Section 5.1, to take any and all appropriate action with respect to the Term Loan Priority Collateral for such purpose and to execute and deliver any and all documents and instruments with respect thereto that may be necessary to accomplish the purposes of this Section 5.1, including any financing statement amendments (form UCC3) or any other endorsements or other instruments of transfer or release with respect to the relevant Term Loan Priority Collateral required for such purpose.

(m) Until the Payment in Full of ABL Priority Debt occurs, to the extent that the ABL Claimholders (i) have released any Lien on ABL Priority Collateral or any Grantor with respect to the ABL Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the ABL Debt, then Term Loan Agent shall be entitled to obtain a Lien on any such ABL Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the Term Loan Debt, as the case may be.

(n) Until the Payment in Full of Term Loan Priority Debt occurs, to the extent that the Term Loan Claimholders (i) have released any Lien on Term Loan Priority Collateral or any Grantor with respect to the Term Loan Debt, and any such Liens or obligations are later reinstated, or (ii) obtain any new Liens from any Grantor or obtain a guaranty from any Grantor of the Term Loan Debt, then ABL Agent shall be entitled to obtain a Lien on any such Term Loan Priority Collateral, subject to the terms (including the lien subordination provisions) of this Agreement, and a guaranty from such Grantor of the ABL Debt, as the case may be.

## 5.2 Insurance.

(a) Unless and until the Payment in Full of ABL Priority Debt has occurred: (i) ABL Agent shall have the sole and exclusive right, subject to the rights of Grantors under the ABL Documents, to adjust and settle any claim under any insurance policy in respect of the ABL Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the ABL Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the rights of Grantors under the ABL Documents and the Term Loan Documents, first to ABL Agent and Term Loan Agent in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any of the Term Loan Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(a), it shall pay such proceeds over to ABL Agent in accordance with the terms of Section 4.2.



(b) Unless and until the Payment in Full of Term Loan Priority Debt has occurred: (i) the Term Loan Claimholders shall have the sole and exclusive right, subject to the rights of Grantors under the Term Loan Documents, to adjust and settle any claim under any insurance policy in respect of the Term Loan Priority Collateral in the event of any loss thereunder and to approve any award granted in any condemnation or similar proceeding (or any deed in lieu of condemnation) affecting the Term Loan Priority Collateral; and (ii) all proceeds of any such insurance policy and any such award (or any payments with respect to a deed in lieu of condemnation) shall be paid, subject to the rights of Grantors under the Term Loan Documents and the ABL Documents, first to the Term Loan Claimholders and the ABL Claimholders in accordance with the priorities set forth in Section 4.1, until paid in full in cash, and second, to the owner of the subject property, such other person as may be entitled thereto, or as a court of competent jurisdiction may otherwise direct. If any of the ABL Claimholders shall, at any time, receive any proceeds of any such insurance policy or any such award or payment in contravention of this Section 5.2(b), it shall pay such proceeds over to Term Loan Agent in accordance with the terms of Section 4.2.

(c) In the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, ABL Agent and Term Loan Agent will work jointly and in good faith to collect, adjust or settle (subject to the rights of the Grantors under the ABL Documents and the Term Loan Documents) any claim under the relevant insurance policy.

(d) Notwithstanding anything contained in this Agreement to the contrary, in the event that any proceeds are derived from any insurance policy that covers ABL Priority Collateral and Term Loan Priority Collateral, then, solely for the purposes of this Agreement, the allocation of proceeds of such insurance policy with respect to Accounts and Inventory shall be allocated to the ABL Priority Collateral in an amount equal to the sum of (A) the face amount of such Accounts constituting ABL Priority Collateral that at any time had been included in the Stated Borrowing Base and (B) the book value determined in accordance with GAAP, but not less than cost, of such Inventory that at any time had been included in the Stated Borrowing Base, determined as of the date of such loss.

(e) To effectuate the foregoing, Grantors shall provide ABL Agent and Term Loan Agent with separate lender's loss payable endorsements naming themselves as loss payee and additional insured, as their interests may appear, with respect to policies which insure Collateral hereunder.

### 5.3 Amendments; Refinancings; Legend.

(a) The ABL Documents may be amended, supplemented, or otherwise modified in accordance with their terms and the ABL Debt may be Refinanced, in each case without notice to, or the consent of, the Term Loan Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to Term Loan Agent) to the terms of this Agreement; provided further, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of Term Loan Agent (which it shall be authorized to consent to based upon an affirmative vote of the

Term Loan Claimholders holding no more than a majority of the debt under the Term Loan Credit Agreement);

- (i) contravene the provisions of this Agreement;
- (ii) increase the "Applicable Margin" or similar component of the interest rate by more than 3.00 percentage points per annum (excluding increases resulting from (A) increases in the underlying reference rate not caused by an amendment, supplement, modification or Refinancing of the ABL Credit Agreement, (B) the application of the pricing grid set forth in the ABL Credit Agreement, or (C) the accrual of interest at the default rate);
- (iii) subordinate payment of the ABL Debt (or any Refinancing thereof) to the prior payment of any other "Debt" (as defined in the Term Loan Credit Agreement) other than (A) other ABL Priority Debt, and (B) any ABL DIP Financing;
- (iv) extend the scheduled final maturity of the ABL Credit Agreement or any Refinancing thereof beyond the scheduled maturity of the Term Loan Credit Agreement;
- (v) modify the mandatory prepayment provisions of the ABL Credit Agreement or any ABL Document in a manner that restricts the amount of permitted mandatory prepayments in respect of the Term Loan Debt;
- (vi) impose or make more onerous on any Grantor redemption, mandatory prepayment, or defeasance provisions thereof (other than in connection with the waiver, amendment or forbearance with respect to an ABL Default); or
- (vii) modify the definition of "Borrowing Base" or any term used as a defined term within such definition in a manner to make more credit available to the Grantors; and
- (viii) change any representations, warranties, covenants, defaults, or events of default under the ABL Credit Agreement or any other ABL Document (including the addition of representations, warranties, covenants, defaults, or events of default not contained in the ABL Credit Agreement or other ABL Documents as in effect on the date hereof) to restrict any Grantor from making payments of the Term Loan Debt that would otherwise be permitted under this Agreement or under the ABL Documents as in effect on the date hereof.

(b) The Term Loan Documents may be amended, supplemented, or otherwise modified in accordance with their terms and the Term Loan Debt may be Refinanced, in each case without notice to, or the consent of, any of the ABL Claimholders, all without affecting the lien subordination or other provisions of this Agreement; provided, that, in the case of a Refinancing, the holders of such Refinancing debt shall have bound themselves (in a writing addressed to ABL Agent) to the terms of this Agreement; provided further, that any such amendment, supplement, modification, or Refinancing shall not, without the prior written consent of ABL Agent (which it shall be authorized to consent to based upon an affirmative vote

of the ABL Claimholders holding no more than a majority of the debt under the ABL Credit Agreement):

- (i) contravene the provisions of this Agreement;
  - (ii) increase the "Applicable Margin" or similar component of the cash pay portion of any interest rate by more than 3.00 percentage points per annum (excluding increases resulting from the accrual of interest at the default rate);
  - (iii) subordinate payment of the Term Loan Debt to the prior payment of any other indebtedness other than (A) other Term Loan Debt and (B) any Term Loan DIP Financing;
  - (iv) modify the mandatory prepayment provisions of the Term Loan Credit Agreement or any Term Loan Document in a manner that restricts the amount of permitted mandatory prepayments in respect of the ABL Priority Debt;
  - (v) change the redemption, mandatory prepayment, or defeasance provisions thereof (other than in connection with the waiver, amendment or forbearance with respect to an Term Loan Default); or
  - (vi) change any representations, warranties, covenants, defaults, or events of default under the Term Loan Credit Agreement or any other Term Loan Document (including the addition of representations, warranties, covenants, defaults, or events of default not contained in the Term Loan Credit Agreement or other Term Loan Documents as in effect on the date hereof) to restrict any Grantor from making payments of the ABL Debt that would otherwise be permitted under the Term Loan Documents as in effect on the date hereof.
- (c) Borrowers agree that any promissory note evidencing the ABL Debt shall at all times include the following language (or language to similar effect approved by Term Loan Agent):

"Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of \_\_\_\_\_, (as amended, restated, supplemented, or otherwise modified from time to time, the "**Intercreditor Agreement**"), by and between Wells Fargo Capital Finance, LLC, as ABL Agent, and Bayside Finance, LLC, as Term Loan Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control."

- (d) Borrowers agree that any promissory note evidencing the Term Loan Debt shall at all times include the following language (or language to similar effect approved by ABL Agent):

“Anything herein to the contrary notwithstanding, the liens and security interests securing the obligations evidenced by this promissory note, the exercise of any right or remedy with respect thereto, and certain of the rights of the holder hereof are subject to the provisions of the Intercreditor Agreement dated as of \_\_\_\_\_, (as amended, restated, supplemented, or otherwise modified from time to time, the “**Intercreditor Agreement**”), by and between Wells Fargo Capital Finance, LLC, as ABL Agent, and Bayside Finance, LLC, as Term Loan Agent. In the event of any conflict between the terms of the Intercreditor Agreement and this promissory note, the terms of the Intercreditor Agreement shall govern and control.”

#### 5.4 Bailee for Perfection.

(a) ABL Agent and Term Loan Agent each agree to hold that part of the Collateral that is in its possession (or in the possession of its agents or bailees), to the extent that possession is necessary to perfect a Lien thereon under the UCC or other applicable law (such possessory Collateral being referred to as the “**Pledged Collateral**”), as gratuitous bailee and as a non-fiduciary representative and agent for perfection for Term Loan Agent or ABL Agent, as applicable, solely for the purpose of perfecting the security interest granted under the Term Loan Documents or the ABL Documents, as applicable, subject to the terms and conditions of this Section 5.4. Term Loan Agent hereby appoints ABL Agent as its gratuitous bailee and non-fiduciary representative and agent for perfection for the purposes of perfecting their security interest in all Pledged Collateral in which ABL Agent has a perfected security interest under the UCC. ABL Agent hereby appoints Term Loan Agent as its gratuitous bailee and non-fiduciary representative and agent for perfection for the purposes of perfecting their security interest in all Pledged Collateral in which Term Loan Agent has a perfected security interest under the UCC. Each of ABL Agent and Term Loan Agent hereby accept such appointments pursuant to this Section 5.4. Unless and until the Payment in Full of ABL Priority Debt and payment in full in cash of all Excess ABL Debt, Term Loan Agent agrees to promptly notify ABL Agent of any Pledged Collateral constituting ABL Priority Collateral held by it or by any other Term Loan Claimholder, and, immediately upon the request of ABL Agent at any time prior to the Payment in Full of ABL Priority Debt and, except as set forth below, payment in full in cash of the Excess ABL Debt, Term Loan Agent agrees to deliver to ABL Agent any such Pledged Collateral held by it or by any other Term Loan Claimholder, together with any necessary endorsements (or otherwise allow ABL Agent to obtain possession of such Pledged Collateral). Unless and until the Payment in Full of Term Loan Priority Debt, ABL Agent agrees to promptly notify Term Loan Agent of any Pledged Collateral constituting Term Loan Priority Collateral held by it or by any other ABL Claimholder, and, immediately upon the request of Term Loan Agent at any time prior to the Payment in Full of Term Loan Priority Debt, ABL Agent agrees to deliver to Term Loan Agent any such Pledged Collateral held by it or by any other ABL Claimholder, together with any necessary endorsements (or otherwise allow Term Loan Agent to obtain possession of such Pledged Collateral). Notwithstanding the foregoing, (i) at such time as Payment in Full of ABL Priority Debt has occurred, Term Loan Agent shall have the right, by notice to the ABL Agent, to require the ABL Agent to deliver to Term Loan Agent any such Pledged Collateral held by it or by any other ABL Claimholder, together with any necessary endorsements (or otherwise allow Term Loan Agent to obtain possession of such Pledged Collateral), notwithstanding the existence of Excess ABL Debt, and (ii) at such time as Payment in Full of

Term Loan Priority Debt has occurred, ABL Agent shall have the right, by notice to the Term Loan Agent, to require the Term Loan Agent to deliver to ABL Agent any such Pledged Collateral held by it or by any other Term Loan Claimholder, together with any necessary endorsements (or otherwise allow ABL Agent to obtain possession of such Pledged Collateral).

(b) ABL Agent shall have no obligation whatsoever to any of the Term Loan Claimholders to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. Term Loan Agent shall have no obligation whatsoever to any of the ABL Claimholders to ensure that the Pledged Collateral is genuine or owned by any of Grantors or to preserve rights or benefits of any person except as expressly set forth in this Section 5.4. The duties or responsibilities of ABL Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee and non-fiduciary representative and agent for perfection in accordance with this Section 5.4 and delivering any Pledged Collateral in its possession (or in the possession of its agents or bailees) upon a Payment in Full of ABL Priority Debt as provided in Section 5.6. The duties or responsibilities of Term Loan Agent under this Section 5.4 shall be limited solely to holding the Pledged Collateral as bailee and non-fiduciary representative and agent for perfection in accordance with this Section 5.4 and delivering any Pledged Collateral in its possession (or in the possession of its agents or bailees) as provided in Section 5.6.

(c) ABL Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the Term Loan Claimholders. Term Loan Agent, in acting pursuant to this Section 5.4, shall not have, or be deemed to have, a fiduciary relationship in respect of any of the ABL Claimholders.

#### 5.5 When Payment in Full of ABL Priority Debt or Payment in Full of Term Loan Priority Debt Deemed to Not Have Occurred.

(a) If any Borrower enters into any Refinancing of the ABL Priority Debt that is intended to be secured by the ABL Priority Collateral on a first priority basis, then a Payment in Full of ABL Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such ABL Debt shall be treated as ABL Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and ABL Agent under the ABL Documents effecting such Refinancing shall be ABL Agent for all purposes of this Agreement. ABL Agent under such ABL Documents shall agree (in a writing addressed to Term Loan Agent) to be bound by the terms of this Agreement and Term Loan Agent agrees to acknowledge and accept such writing.

(b) If any Borrower enters into any Refinancing of the Term Loan Priority Debt that is intended to be secured by the Term Loan Priority Collateral on a first priority basis, then a Payment in Full of Term Loan Priority Debt shall be deemed not to have occurred for all purposes of this Agreement, and the obligations under such Refinancing of such Term Loan Debt shall be treated as Term Loan Debt for all purposes of this Agreement, including for purposes of the Lien priorities and rights in respect of Collateral set forth herein, and Term Loan Agent under the Term Loan Documents effecting such Refinancing shall be Term Loan Agent for all purposes of this Agreement. Term Loan Agent under such Term Loan Documents shall agree (in a

writing addressed to ABL Agent) to be bound by the terms of this Agreement and ABL Agent agrees to acknowledge and accept such writing.

5.6 Transfer of Pledged Collateral; Other Actions.

(a) ABL Agent hereby agrees that upon the Payment in Full of the ABL Debt, to the extent permitted by applicable law, upon the written request of Term Loan Agent (with all costs and expenses in connection therewith to be for the account of Term Loan Agent and to be paid by Grantors):

(i) ABL Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Pledged Collateral, if any, then in its possession to Term Loan Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the ABL Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the ABL Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law; and

(ii) in connection with the terms of any collateral access agreement, whether with a landlord, processor, warehouseman, or other third party or any control agreement, at such time as no ABL Debt is outstanding, ABL Agent shall notify the other parties thereto that it no longer has rights as secured party thereunder, and if Payment in Full of the ABL Priority Debt has occurred and Excess ABL Debt remains outstanding, notify the other parties thereto that the Term Loan Agent has priority rights thereunder.

(b) Term Loan Agent hereby agrees that upon the Payment in Full of the Term Loan Priority Debt, to the extent permitted by applicable law, upon the written request of ABL Agent (with all costs and expenses in connection therewith to be for the account of ABL Agent and to be paid by Grantors):

(i) Term Loan Agent shall, without recourse or warranty, take commercially reasonable steps to transfer the possession of the Pledged Collateral, if any, then in its possession to ABL Agent, except in the event and to the extent (A) such Collateral is sold, liquidated, or otherwise disposed of by any of the Term Loan Claimholders or by a Grantor as provided herein in full or partial satisfaction of any of the Term Loan Debt or (B) it is otherwise required by any order of any court or other governmental authority or applicable law; and

(ii) in connection with the terms of any collateral access agreement, whether with a landlord, processor, warehouseman, or other third party or any control agreement, at such time as no Term Loan Priority Debt is outstanding, Term Loan Agent shall notify the other parties thereto that it no longer has rights as secured party.

(c) The foregoing provisions shall not impose on any of the ABL Claimholders or any of the Term Loan Claimholders any obligations that would conflict with prior perfected claims therein in favor of any other Person or any order or decree of any court or other governmental authority or any applicable law or give rise to risk of legal liability.

## SECTION 6. Insolvency Proceedings.

6.1 Enforceability and Continuing Priority. This Agreement shall be applicable both before and after the commencement of any Insolvency Proceeding and all converted or succeeding cases in respect thereof. The relative rights of the Claimholders in or to any distributions from or in respect of any Collateral, or proceeds of Collateral, shall continue after the commencement of any Insolvency Proceeding. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code.

### 6.2 Financing.

(a) Until the Payment in Full of ABL Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if ABL Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code (or similar Bankruptcy Law)) constituting ABL Priority Collateral (herein, "**ABL Cash Collateral**"), or consents to such Grantor obtaining financing, whether from any of the ABL Claimholders or any other Person, provided under Section 364 of the Bankruptcy Code or any similar provision of any other Bankruptcy Law secured by a Lien on such ABL Priority Collateral (such financing, an "**ABL DIP Financing**"), and if such ABL Cash Collateral use or ABL DIP Financing, as applicable, meets the applicable ABL DIP Financing Conditions, then Term Loan Agent unconditionally agrees that it will consent to such ABL Cash Collateral use and will raise no objection to such ABL DIP Financing, as applicable, and, if ABL DIP Financing is involved, Term Loan Agent will subordinate its Liens in the ABL Priority Collateral (and in any other assets (other than Term Loan Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such ABL DIP Financing) to the Liens securing such ABL DIP Financing. If such ABL Cash Collateral use or ABL DIP Financing, as applicable, does not meet all of the applicable ABL Financing Conditions then the Term Loan Agent may withhold its consent to, and object to, such ABL Cash Collateral use and/or any such ABL DIP Financing. Term Loan Agent agrees that it shall not, and nor shall any of the Term Loan Claimholders, directly or indirectly (including by or through an affiliate), provide, offer to provide, or support any ABL DIP Financing secured by a Lien on the ABL Priority Collateral senior to or pari passu with the Liens securing the ABL Debt. If, in connection with any ABL Cash Collateral use or ABL DIP Financing, any Liens on the ABL Priority Collateral held by the ABL Claimholders to secure the ABL Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the ABL Priority Collateral of the Term Loan Claimholders securing the Term Loan Priority Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the ABL Priority Collateral of the ABL Claimholders consistent with this Agreement.

(b) Until the Payment in Full of Term Loan Priority Debt, if any Grantor shall be subject to any Insolvency Proceeding and if Term Loan Agent consents to the use of cash collateral (as such term is defined in Section 363(a) of the Bankruptcy Code (or similar Bankruptcy Law)) constituting Term Loan Priority Collateral (herein, "**Term Loan Cash Collateral**"), or consents to such Grantor obtaining financing, whether from the Term Loan Claimholders or any other Person, provided under Section 364 of the Bankruptcy Code or any

similar provision of any other Bankruptcy Law secured by a Lien on such Term Loan Priority Collateral (such financing, a **"Term Loan DIP Financing"**), and if such Term Loan Cash Collateral use or Term Loan DIP Financing, as applicable, meets the applicable Term Loan DIP Financing Conditions, then ABL Agent unconditionally agrees that it will consent to such Term Loan Cash Collateral use and will raise no objection to such Term Loan DIP Financing, as applicable, and, if Term Loan DIP Financing is involved, ABL Agent will subordinate its Liens in the Term Loan Priority Collateral (and in any other assets (other than ABL Priority Collateral) of the Grantors that may serve as collateral (including avoidance actions or the proceeds thereof) for such Term Loan DIP Financing) to the Liens securing such Term Loan DIP Financing. If such Term Loan Cash Collateral use or Term Loan DIP Financing, as applicable, does not meet all of the applicable Term Loan Financing Conditions, then the ABL Agent may withhold its consent to, and object to, such Term Loan Cash Collateral use and/or any such Term Loan DIP Financing. ABL Agent agrees that it shall not, and nor shall any of the ABL Claimholders, directly or indirectly (including by or through an affiliate), provide, offer to provide, or support any Term Loan DIP Financing secured by a Lien on the Term Loan Priority Collateral that is senior to or pari passu with the Liens securing the Term Loan Priority Debt. If, in connection with any Term Loan Cash Collateral use or Term Loan DIP Financing, any Liens on the Term Loan Priority Collateral held by the Term Loan Claimholders to secure the Term Loan Debt are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve-out," or fees owed to the United States Trustee, then the Liens on the Term Loan Priority Collateral of the ABL Claimholders securing the ABL Debt shall also be subordinated to such interest or claim and shall remain subordinated to the Liens on the Term Loan Priority Collateral of the Term Loan Claimholders consistent with this Agreement.

(c) All Liens granted to ABL Agent or Term Loan Agent in any Insolvency Proceeding, whether as adequate protection or otherwise, are intended by the parties to be and shall be deemed to be subject to the Lien priorities in Section 2.1 and the other terms and conditions of this Agreement.

6.3 Sales. Each Junior Agent agrees that it will consent to, and will not object or oppose, or support, directly or indirectly, any other person seeking to object or oppose, a motion by a Grantor that is supported by the Priority Agent to Dispose of any of its Priority Collateral free and clear of the Liens of the Junior Agent under Section 363 or 1129 of the Bankruptcy Code if (a) the Priority Agent has consented to the sale of such Collateral free and clear of the Liens of the Priority Agent, (b) such motion does not impair, subject to the priorities set forth in this Agreement, the rights of the Junior Claimholders under Section 363(k) of the Bankruptcy Code (so long as the right of the Junior Claimholders to offset their claims against the purchase price only arises after the Priority Debt has been paid in full in cash), and (c) either (i) pursuant to court order, the Liens of the Junior Agent attach to the net proceeds of the Disposition with the same priority and validity as the Liens held by such Junior Agent on such Priority Collateral, and the Liens remain subject to the terms of this Agreement, or (ii) the proceeds of the Disposition are applied in accordance with Section 4.1. The foregoing notwithstanding, the Junior Claimholders may oppose or raise any objections to such Disposition of such Priority Collateral that could be raised by a creditor of Grantors whose claims are not secured by Liens on such Priority Collateral (including an opposition or objection to the proposed bidding procedures), provided that such opposition or objections are not inconsistent with any other term or provision of this Agreement and are not based on their status as secured creditors (without



limiting the foregoing, the Junior Claimholders may not oppose or raise any objections based on rights afforded by Sections 363(e) and (f) of the Bankruptcy Code to secured creditors (or any comparable provision of any other Bankruptcy Law) with respect to the Liens granted to the Junior Agent in respect of such assets).

6.4 Relief from the Automatic Stay. Until the Payment in Full of Priority Debt has occurred, Junior Agent agrees not to (a) seek (or support any other person seeking) relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral, without the prior written consent of Priority Agent; provided, that Junior Agent may seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of such Priority Collateral if and to the extent that Priority Agent has obtained relief from or modification of such stay in respect of the Priority Collateral, or (b) oppose any request by the Priority Agent or any Priority Claimholder to seek relief from the automatic stay or any other stay in any Insolvency Proceeding in respect of any Priority Collateral.

6.5 Adequate Protection. In any Insolvency Proceeding involving a Grantor,

(a) each Claimholder agrees that it shall not object to or contest, or support any other person objecting or contesting (and instead shall be deemed to have hereby irrevocably, absolutely, and unconditionally waived any right to do so):

(i) any request by any Priority Claimholder with respect to any Priority Collateral prior to the applicable Payment in Full of Priority Debt, for adequate protection of its interest in the Priority Collateral, or any request by any Junior Claimholder with respect to any Junior Collateral, for the following adequate protection of its interest in the Junior Collateral: (A) subject to Section 6.4(b), a request for replacement or additional Liens on existing or future assets of Grantors, including post-petition assets, of the same type as such Priority Collateral, and (B) subject to the proviso below, cash payments, and (C) subject to Section 6.5(e) and Section 6.5(f), claims under Section 507(b) of the Bankruptcy Code (or similar Bankruptcy Law); provided, that (w) any ABL Claimholder, solely in its capacity as a Priority Claimholder, may object to adequate protection of the Term Loan Claimholders in respect of their junior Lien on ABL Priority Collateral in the form of cash payments to the extent such payment is sought to be paid from ABL DIP Financing or ABL Priority Collateral or the proceeds (or advances in respect) thereof prior to confirmation of a plan of reorganization or a liquidation under Chapter 7 of the Bankruptcy Code after Payment in Full of ABL Priority Debt occurs, (x) no ABL Claimholder, solely in its capacity as a Priority Claimholder, shall object to adequate protection of the Term Loan Claimholders in respect of their junior Lien on ABL Priority Collateral in the form of cash payments to the extent such payment is sought to be paid from ABL Priority Collateral or the proceeds (or advances in respect) thereof if such cash payment can only be made pursuant to confirmation of a plan of reorganization or a liquidation under Chapter 7 of the Bankruptcy Code in which Payment in Full of ABL Priority Debt occurs, (y) any Term Loan Claimholder, solely in its capacity as a Priority Claimholder, may object to adequate protection of the ABL Claimholders in respect of their junior Lien on Term Loan Priority Collateral in the form of cash payments to the extent such payment is sought to be paid from Term Loan DIP Financing, Term Loan Priority Collateral or the

proceeds (or advances in respect) thereof prior to confirmation of a plan of reorganization or a liquidation under Chapter 7 of the Bankruptcy Code in which Payment in Full of Term Loan Priority Debt occurs, and (z) no Term Loan Claimholder, solely in its capacity as a Priority Claimholder, shall object to adequate protection of the ABL Claimholders in respect of their junior Lien on Term Loan Priority Collateral in the form of cash payments to the extent such payment is sought to be paid from Term Loan Priority Collateral or the proceeds (or advances in respect) thereof if such cash payment can only be made pursuant to confirmation of a plan of reorganization or a liquidation under Chapter 7 of the Bankruptcy Code after Payment in Full of Term Loan Priority Debt occurs; or

(ii) as applicable, any (A) objection by any Priority Claimholder to any motion, relief, action, or proceeding based on such Priority Claimholders claiming a lack of adequate protection with respect to their Liens in their Priority Collateral, or any objection by any Junior Claimholder to any motion, relief, action, or proceeding based on such Junior Claimholders claiming a lack of adequate protection with respect to their Liens in their Junior Collateral, so long as such objection is not in contravention of the other terms of this Agreement, or (B) request by any of the Priority Claimholders for relief from the automatic stay with respect to its Priority Collateral;

(b) no Junior Claimholder shall be granted adequate protection with respect to its rights in the Junior Collateral in the form of an additional or replacement Lien with respect to assets of the type included in such Junior Collateral unless the Priority Agent shall also have been granted an additional or replacement Lien with respect to such assets constituting its Priority Collateral, and any additional or replacement adequate protection Lien of the Junior Claimholders, if obtained, shall be subordinate to the adequate protection Liens in and to such assets securing the Priority Debt on the same basis as the other Liens securing the Junior Debt on the Junior Priority Collateral are subordinated to the Liens on the Priority Collateral securing the Priority Debt under this Agreement;

(c) no Junior Claimholder may seek adequate protection with respect to its rights in the Priority Collateral except as permitted under Section 6.5(a)(i);

(d) each Claimholder may seek adequate protection with respect to its rights in the Collateral in the form of an additional or replacement Lien in and to existing or future Excluded Collateral; provided, that, if the ABL Claimholders and the Term Loan Claimholders each receive adequate protection in the form of Liens in and to the Excluded Collateral, then (i) any such Liens in and to Excluded Collateral granted as adequate protection of such Claimholder's interest in and to its Priority Collateral shall be senior in all respects, and prior to, any other Claimholder's Lien in and to such Excluded Collateral granted as adequate protection of such other Claimholder's interest in and to its Junior Collateral, (ii) any such Liens in and to Excluded Collateral granted as adequate protection of an ABL Claimholder's interest in and to its Priority Collateral and any such Liens in and to Excluded Collateral granted as adequate protection of a Term Loan Claimholder's interest in and to its Priority Collateral shall rank equally and ratably (ratability being calculated based upon the relationship of the ABL Diminution Amount and the Term Loan Diminution Amount), and (iii) any such Liens in and to Excluded Collateral granted as adequate protection of an ABL Claimholder's interest in and to

its Junior Collateral and any such Liens in and to Excluded Collateral granted as adequate protection of a Term Loan Claimholder's interest in and to its Junior Collateral shall rank equally and ratably (ratability being calculated based upon the relationship of the ABL Diminution Amount and the Term Loan Diminution Amount);

(e) any adequate protection granted in favor of any Priority Claimholder in the form of a superpriority or other administrative expense claim and any claim in favor of any Priority Claimholder arising under Section 507(b) of the Bankruptcy Code ("Senior 507(b) Claims"), shall be *pari passu* with the grant of adequate protection in favor of the other Priority Claimholders in the form of a superpriority or other administrative expense claim and any Senior 507(b) Claims in favor of such other Priority Claimholders;

(f) any claim arising under Section 507(b) of the Bankruptcy Code in favor of any Junior Claimholder shall be *pari passu* with the claims arising under Section 507(b) of the Bankruptcy Code in favor of the other Junior Claimholders (collectively, "Junior 507(b) Claims"), all Junior 507(b) Claims shall be junior and subordinate in right of payment to the Senior 507(b) Claims, and the holders of the Junior 507(b) Claims agree that, in connection with any plan of reorganization in such Insolvency Proceeding, such Junior 507(b) Claims may be paid in any combination of cash, securities, or other property having a present value equal to the amount of such Junior 507(b) Claims as of the effective date of confirmation of such plan; and

(g) no Junior Claimholder shall object to, oppose, or challenge any claim by any Priority Claimholder for allowance of Priority Debt consisting of post-petition interest, fees, or expenses, subject to Section 2.2 and Section 5.3.

6.6 Specific Sections of the Bankruptcy Code. The Junior Claimholders shall not object to, oppose, support any objection, or take any other action to impede, the right of any Priority Claimholder to make an election under Section 1111(b)(2) of the Bankruptcy Code. The Junior Claimholders waive any claim they may hereafter have against any Priority Claimholder arising out of the election by any Priority Claimholder of the application of Section 1111(b)(2) of the Bankruptcy Code. The Junior Claimholders agree that they will not, directly or indirectly, assert or support the assertion of, and hereby waive any right that they may have to assert or support the assertion of any claim under Section 506(c) or the "equities of the case" exception of Section 552(b) of the Bankruptcy Code as against any Priority Claimholder or with respect to any of the Priority Collateral to the extent securing the Priority Debt; provided, that nothing herein shall restrict the holder of any DIP Financing from having, or seeking to have, such DIP Financing repaid, in whole or in part, from the proceeds of the assertion of any claim under Section 506(c) of the Bankruptcy Code (or any comparable provision of any other Bankruptcy Law).

6.7 No Waiver; Limitation.

(a) Subject to Sections 3.1(a), 3.2(a), and the other provisions of this Section 6, nothing contained herein shall prohibit or in any way limit any Agent or any other Claimholder from objecting in any Insolvency Proceeding involving a Grantor to any action taken by the other Agent or any other Claimholder, including the seeking by the other Agent or any other Claimholder of adequate protection or the assertion by the other Agent or any other

Claimholder of any of its rights and remedies under the Term Loan Documents or the ABL Documents, as applicable.

6.8 Avoidance Issues. If any Claimholder is required in any Insolvency Proceeding or otherwise to turn over, disgorge, or otherwise pay to the estate of any Grantor any amount paid in respect of the Debt of such Claimholder (or if any Claimholder elects to do so upon the advice of counsel) (a "**Recovery**"), then such Claimholder shall be entitled to a reinstatement of the applicable Debt with respect to all such amounts, and all rights, interests, priorities, and privileges recognized in this Agreement shall apply with respect to any such Recovery. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair, or otherwise affect the obligations of the parties hereto from such date of reinstatement.

6.9 Plan of Reorganization.

(a) If, in any Insolvency Proceeding involving a Grantor, debt obligations of the reorganized debtor secured by Liens upon any property of the reorganized debtor are distributed pursuant to a confirmed plan of reorganization or similar dispositive restructuring plan, both on account of ABL Debt and on account of Term Loan Debt, then, to the extent the debt obligations distributed on account of the ABL Debt and on account of the Term Loan Debt are secured by Liens upon the same property, the provisions of this Agreement will survive the distribution of such debt obligations pursuant to such plan and will apply with like effect to the Liens securing such debt obligations.

(b) The provisions of Section 1129(b)(1) of the Bankruptcy Code notwithstanding, the Claimholders agree that they will not propose, support, or vote in favor of any plan of reorganization of a Grantor that is inconsistent with the Lien priorities of this Agreement (giving effect to Section 4.2(b) and (d) and Section 6.9(c) and (d)).

(c) If, in connection with an Insolvency Proceeding involving a Grantor, the Term Loan Claimholders receive any cash, debt, or equity securities on account of their Term Loan Secured Claims in respect of their interest in the ABL Priority Collateral, the Term Loan Agent or the other Term Loan Claimholders, as applicable, shall turnover such cash, claims, or securities to ABL Agent for application in accordance with Section 4.1, unless (i) the receipt and retention of such cash, claims, or securities is permitted under Sections 2.1, 4.2(b) or (d), 6.5 or this 6.9(c), or (ii) the distribution of such cash, claims, or securities is made pursuant to a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the ABL Claimholders. Term Loan Agent irrevocably authorizes and empowers ABL Agent, in the name of each Term Loan Claimholder, to demand, sue for, collect, and receive any and all such distributions on account of any Term Loan Secured Claim in respect of such Term Loan Claimholder's interest in the ABL Priority Collateral to which the ABL Claimholders are entitled hereunder. Nothing in this Agreement prohibits or limits the right of the Term Loan Claimholders to receive and retain any cash, debt, or equity securities on account of Term Loan Deficiency Claims or in respect of any other portion of their Term Loan Secured Claims that are not on account of their interest in the ABL Priority Collateral.

(d) If, in connection with an Insolvency Proceeding involving a Grantor, the ABL Claimholders receive any cash, debt, or equity securities on account of their ABL Secured Claims in respect of their interest in the Term Loan Priority Collateral, the ABL Agent or the other ABL Claimholders, as applicable, shall turnover such cash, claims, or securities to Term Loan Agent for application in accordance with Section 4.1, unless (i) the receipt and retention of such cash, claims, or securities is permitted under Sections 2.1, 6.5 or this 6.9(d), or (ii) the distribution of such cash, claims, or securities is made pursuant to a confirmed plan of reorganization of such Grantor that is accepted by the requisite affirmative vote of all classes composed of the secured claims of the Term Loan Claimholders. ABL Agent irrevocably authorizes and empowers Term Loan Agent, in the name of each ABL Claimholder, to demand, sue for, collect, and receive any and all such distributions on account of any ABL Secured Claim in respect of such ABL Claimholder's interest in the Term Loan Priority Collateral to which the Term Loan Claimholders are entitled hereunder. Nothing in this Agreement prohibits or limits the right of the ABL Claimholders to receive and retain any cash, debt, or equity securities on account of ABL Deficiency Claims or in respect of any other portion of their ABL Secured Claims that are not on account of their interest in the Term Loan Priority Collateral.

#### **SECTION 7. Reliance; Waivers; Etc.**

7.1 Reliance. Other than any reliance on the terms of this Agreement, ABL Agent acknowledges that it and each of the other ABL Claimholders have, independently and without reliance on any of the Term Loan Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the ABL Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the ABL Documents or this Agreement. Other than any reliance on the terms of this Agreement, Term Loan Agent acknowledges that it and each of the other Term Loan Claimholders have, independently and without reliance on any of the ABL Claimholders, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into each of the Term Loan Documents and be bound by the terms of this Agreement and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Documents or this Agreement.

7.2 No Warranties or Liability. ABL Agent acknowledges and agrees that none of the Term Loan Claimholders have made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the Term Loan Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the Term Loan Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. Term Loan Agent acknowledges and agrees that none of the ABL Claimholders has made any express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability, or enforceability of any of the ABL Documents, the ownership of any Collateral, or the perfection or priority of any Liens thereon. Except as otherwise expressly provided herein, the ABL Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the ABL Documents in accordance with law and as they may otherwise, in their

sole discretion, deem appropriate. The Term Loan Claimholders shall have no duty to the ABL Claimholders, and the ABL Claimholders shall have no duty to the Term Loan Claimholders, to act or refrain from acting in a manner that allows, or results in, the occurrence or continuance of an event of default or default under any agreements with any Grantor (including the ABL Documents and the Term Loan Documents), regardless of any knowledge thereof which they may have or be charged with.

### 7.3 No Waiver of Lien Priorities.

(a) No right of any of the Claimholders, any Agent or any of them to enforce any provision of this Agreement or any Loan Document shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of any Grantor or by any act or failure to act by any other Claimholder or any Agent, or by any noncompliance by any person with the terms, provisions, and covenants of this Agreement, any of the Loan Documents, regardless of any knowledge thereof which any Agent or any other Claimholder may have (or be otherwise charged with).

(b) Without in any way limiting the generality of the foregoing provisions of Section 7.3(a) (but subject to any rights of Grantors under the ABL Documents and subject to the provisions of Section 5.3(a)), the ABL Claimholders may, at any time and from time to time in accordance with the ABL Documents or applicable law or any applicable provisions of this Agreement, without the consent of, or notice to, any of the Term Loan Claimholders, without incurring any liabilities to any of the Term Loan Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the Term Loan Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of Term Loan Agent:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the ABL Debt or any Lien on any ABL Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the ABL Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by any of the ABL Claimholders, the ABL Debt, or any of the ABL Documents;

(ii) sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order all or any part of the ABL Priority Collateral or any liability of any Grantor to any of the ABL Claimholders, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any ABL Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any ABL Priority Collateral and any guarantor or any liability of any Grantor to any of the ABL Claimholders or any liability incurred directly or indirectly in respect thereof.

(c) Except as otherwise provided herein, Term Loan Agent also agrees that the ABL Claimholders shall have no liability to any of the Term Loan Claimholders, and Term Loan Agent hereby waives any claim of the Term Loan Claimholders against any of the ABL Claimholders arising out of any and all actions which any of the ABL Claimholders may, pursuant to the terms hereof, take, permit, or omit to take with respect to:

- (i) the ABL Documents;
- (ii) the collection of the ABL Debt; or
- (iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any ABL Priority Collateral.

Term Loan Agent agrees that the ABL Claimholders have no duty to the Term Loan Claimholders in respect of the maintenance or preservation of the ABL Priority Collateral, the ABL Debt, or otherwise.

(d) Without in any way limiting the generality of the provisions of Section 7.3(a) (but subject to any rights of Grantors under the Term Loan Documents and subject to the provisions of Section 5.3(b)) the Term Loan Claimholders may, at any time and from time to time in accordance with the Term Loan Documents or applicable law, without the consent of, or notice to, any of the ABL Claimholders, without incurring any liabilities to any of the ABL Claimholders and without impairing or releasing the Lien priorities and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of any of the ABL Claimholders is affected, impaired, or extinguished thereby) do any one or more of the following without the prior written consent of ABL Agent:

(i) change the manner, place, or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase, or alter, the terms of any of the Term Loan Debt or any Lien on any Term Loan Collateral or guarantee thereof or any liability of any Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of the Term Loan Debt, without any restriction as to the tenor or terms of any such increase or extension) or otherwise amend, renew, exchange, extend, modify, or supplement in any manner any Liens held by the Term Loan Claimholders, the Term Loan Debt, or any of the Term Loan Documents;

(ii) subject to Section 3.9, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Term Loan Priority Collateral or any liability of any Grantor to any Term Loan Claimholder, or any liability incurred directly or indirectly in respect thereof;

(iii) settle or compromise any Term Loan Debt or any other liability of any Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof; and

(iv) exercise or delay in or refrain from exercising any right or remedy against any Grantor or any other person, elect any remedy and otherwise deal freely with any Grantor or any Term Loan Priority Collateral and any guarantor or any liability of any Grantor to any Term Loan Claimholder or any liability incurred directly or indirectly in respect thereof.

(e) Except as otherwise provided herein, ABL Agent also agrees that the Term Loan Claimholders shall have no liability to any of the ABL Claimholders, and ABL Agent hereby waives any claim of the ABL Claimholders against any of the Term Loan Claimholders arising out of any and all actions which any of the Term Loan Claimholders may, pursuant to the terms hereof, take, permit or omit to take with respect to:

- (i) the Term Loan Documents;
- (ii) the collection of the Term Loan Debt; or
- (iii) the foreclosure upon, or sale, liquidation, or other disposition of, or the failure to foreclose upon, or sell, liquidate, or otherwise dispose of, any Term Loan Priority Collateral.

ABL Agent agrees that the Term Loan Claimholders have no duty to the ABL Claimholders in respect of the maintenance or preservation of the Term Loan Priority Collateral, the Term Loan Debt, or otherwise.

(f) Until the Payment in Full of ABL Priority Debt and the Payment in Full of Term Loan Priority Debt, each of Term Loan Agent and ABL Agent agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead, or otherwise assert, or otherwise claim the benefit of, any marshaling, appraisal, valuation, or other similar right that may otherwise be available under applicable law with respect to the other Agent's Priority Collateral or any other similar rights a junior secured creditor may have under applicable law, except in the case of valuation or appraisal, as may be required in connection with compliance with the provisions of this Agreement.

**7.4 Obligations Unconditional.** For so long as this Agreement is in full force and effect, all rights, interests, agreements, and obligations of the ABL Claimholders and the Term Loan Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) Subject to Sections 2.1 and 2.2 and as otherwise expressly provided herein, any lack of validity or enforceability of any ABL Documents or any Term Loan Documents;

(b) except as otherwise expressly restricted in this Agreement, any change in the time, manner, or place of payment of, or in any other terms of, all or any of the ABL Debt or Term Loan Debt, or any amendment or waiver or other modification, including any increase in



the amount thereof, whether by course of conduct or otherwise, of the terms of any ABL Document or any Term Loan Document;

(c) except as otherwise expressly restricted in this Agreement, any exchange of any security interest in any Collateral or any other collateral, or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the ABL Debt or Term Loan Debt or any guarantee thereof;

(d) the commencement of any Insolvency Proceeding in respect of any Grantor; or

(e) any other circumstances which otherwise might constitute a defense available to any Grantor in respect of the ABL Debt or the Term Loan Debt.

#### **SECTION 8. Representations and Warranties.**

8.1 Representations and Warranties of Each Party. Each party hereto represents and warrants to the other parties hereto as follows:

(a) Such party is duly organized, validly existing and in good standing under the laws of the jurisdiction of its organization and has all requisite power and authority to execute and deliver this Agreement and to perform its obligations hereunder.

(b) This Agreement has been duly executed and delivered by such party and constitutes a legal, valid and binding obligation of such party, enforceable in accordance with its terms.

(c) The execution, delivery, and performance by such party of this Agreement (i) do not require any consent or approval of, registration or filing with or any other action by any governmental authority and (ii) will not violate any provision of law, statute, rule or regulation, or of the certificate or articles of incorporation or other constitutive documents or by-laws of such party or any order of any governmental authority or any provision of any indenture, agreement or other instrument binding upon such party.

8.2 Representations and Warranties of Each Agent. ABL Agent and Term Loan Agent each represents and warrants to the other that it has been authorized by the ABL Claimholders or the Term Loan Claimholders, as applicable, under the ABL Credit Agreement or the Term Loan Credit Agreement, as applicable, to enter into this Agreement and that each of the agreements, covenants, waivers, and other provisions hereof is valid, binding, and enforceable against the ABL Lenders or Term Loan Lenders, as applicable, as fully as if they were parties hereto.

8.3 Survival. All representations and warranties made by one party hereto in this Agreement shall be considered to have been relied upon by the other party hereto and shall survive the execution and delivery of this Agreement, regardless of any investigation made by any such other party.

## SECTION 9. Miscellaneous.

9.1 Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of any of the ABL Documents or any of the Term Loan Documents, the provisions of this Agreement shall govern and control.

9.2 Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the ABL Claimholders may continue, at any time and without notice to any Term Loan Claimholder, to extend credit and other financial accommodations to or for the benefit of any Grantor constituting ABL Debt in reliance hereof. Each Agent hereby waives any right it may have under applicable law to revoke this Agreement or any of the provisions of this Agreement. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency Proceeding. Any provision of this Agreement that is prohibited or unenforceable shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to any Grantor shall include such Grantor as debtor and debtor-in-possession and any receiver or trustee for such Grantor in any Insolvency Proceeding. Subject to the terms of this Agreement that provide for reinstatement of Debt, this Agreement shall terminate and be of no further force and effect:

(a) with respect to the ABL Claimholders and the ABL Debt, on the date that the ABL Debt is paid in U.S. Dollars in full in cash or immediately available funds and all commitments, if any, to extend credit to Borrowers are terminated or have expired; and

(b) with respect to the Term Loan Claimholders and the Term Loan Debt, on the date that the Term Loan Debt is paid in U.S. Dollars in full in cash or immediately available funds and all commitments, if any, to extend credit to Borrowers are terminated or have expired.

9.3 Amendments; Waivers. No amendment, modification, or waiver of any of the provisions of this Agreement shall be effective unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time.

9.4 Information Concerning Financial Condition of the Borrowers and their Subsidiaries. The ABL Claimholders, on the one hand, and the Term Loan Claimholders, on the other hand, shall each be responsible for keeping themselves informed of (a) the financial condition of each of the Borrowers and their respective Subsidiaries and all endorsers or guarantors of the ABL Debt or the Term Loan Debt and (b) all other circumstances bearing upon the risk of nonpayment of the ABL Debt or the Term Loan Debt. The ABL Claimholders shall have no duty to advise the Term Loan Claimholders of information known to them regarding such condition or any such circumstances or otherwise. The Term Loan Claimholders shall have no duty to advise the ABL Claimholders of information known to them regarding such condition or any such circumstances or otherwise. In the event any of the ABL Claimholders or any of the Term Loan Claimholders, in its sole discretion, undertakes at any time or from time to time to

provide any such information to any other party to this Agreement, it shall be under no obligation:

(a) to make nor shall it be deemed to have made, and the ABL Claimholders and the Term Loan Claimholders, as the case may be, shall not be under any obligation to make nor shall they be deemed to have made, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness, or validity of any such information so provided;

(b) to provide any additional information or to provide any such information on any subsequent occasion;

(c) to undertake any investigation; or

(d) to disclose any information, which pursuant to accepted or reasonable commercial practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

9.5 Subrogation. (a) With respect to any payments or distributions in cash, property, or other assets that any Term Loan Claimholder pays over to ABL Agent under the terms of this Agreement, such Term Loan Claimholders shall be subrogated to the rights of the ABL Claimholders, and (b) with respect to any payments or distributions in cash, property, or other assets that any ABL Claimholder pays over to Term Loan Agent under the terms of this Agreement, such ABL Claimholders shall be subrogated to the rights of the Term Loan Claimholders; provided, that (x) the Term Loan Claimholders shall not assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of all ABL Priority Debt has occurred, and (y) the ABL Claimholders hereby agree not to assert or enforce any such rights of subrogation they may acquire as a result of any payment hereunder until the Payment in Full of all Term Loan Priority Debt has occurred.

9.6 SUBMISSION TO JURISDICTION; WAIVERS.

(a) **ALL JUDICIAL PROCEEDINGS BROUGHT AGAINST ANY PARTY ARISING OUT OF OR RELATING HERETO SHALL BE BROUGHT IN ANY STATE OR FEDERAL COURT OF COMPETENT JURISDICTION IN THE STATE, COUNTY, AND CITY OF NEW YORK. BY EXECUTING AND DELIVERING THIS AGREEMENT, EACH PARTY, FOR ITSELF AND IN CONNECTION WITH ITS PROPERTIES, IRREVOCABLY:**

(i) **ACCEPTS GENERALLY AND UNCONDITIONALLY THE JURISDICTION AND VENUE OF SUCH COURTS;**

(ii) **WAIVES ANY DEFENSE OF FORUM NON CONVENIENS;**

(iii) **AGREES THAT SERVICE OF ALL PROCESS IN ANY SUCH PROCEEDING IN ANY SUCH COURT MAY BE MADE BY REGISTERED OR CERTIFIED MAIL, RETURN RECEIPT REQUESTED, TO**

THE APPLICABLE PARTY AT ITS ADDRESS PROVIDED IN ACCORDANCE WITH SECTION 9.7; AND

(iv) AGREES THAT SERVICE AS PROVIDED IN CLAUSE (iii) ABOVE IS SUFFICIENT TO CONFER PERSONAL JURISDICTION OVER THE APPLICABLE PARTY IN ANY SUCH PROCEEDING IN ANY SUCH COURT, AND OTHERWISE CONSTITUTES EFFECTIVE AND BINDING SERVICE IN EVERY RESPECT.

(b) EACH OF THE PARTIES HERETO HEREBY WAIVES ITS RESPECTIVE RIGHTS TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING HEREUNDER. THE SCOPE OF THIS WAIVER IS INTENDED TO BE ALL-ENCOMPASSING OF ANY AND ALL DISPUTES THAT MAY BE FILED IN ANY COURT AND THAT RELATE TO THE SUBJECT MATTER HEREOF, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY HERETO ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP THAT EACH HAS ALREADY RELIED ON THIS WAIVER IN ENTERING INTO THIS AGREEMENT, AND THAT EACH WILL CONTINUE TO RELY ON THIS WAIVER IN ITS RELATED FUTURE DEALINGS. EACH PARTY HERETO FURTHER WARRANTS AND REPRESENTS THAT IT HAS REVIEWED THIS WAIVER WITH ITS LEGAL COUNSEL AND THAT IT KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS FOLLOWING CONSULTATION WITH LEGAL COUNSEL. THIS WAIVER IS IRREVOCABLE; MEANING THAT IT MAY NOT BE MODIFIED EITHER ORALLY OR IN WRITING (OTHER THAN BY A MUTUAL WRITTEN WAIVER SPECIFICALLY REFERRING TO THIS SECTION 9.6(b) AND EXECUTED BY ABL AGENT AND TERM LOAN AGENT), AND THIS WAIVER SHALL APPLY TO ANY SUBSEQUENT AMENDMENTS, RENEWALS, SUPPLEMENTS, OR MODIFICATIONS HERETO. IN THE EVENT OF LITIGATION, THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

9.7 Notices. All notices permitted or required under this Agreement shall be sent to Term Loan Agent and ABL Agent, as the case may be. Unless otherwise specifically provided herein, any notice hereunder shall be in writing and may be personally served or sent by telefacsimile or United States mail or courier service or electronic mail and shall be deemed to have been given when delivered in person or by courier service and signed for against receipt thereof, upon receipt of telefacsimile or electronic mail, or 3 Business Days after depositing it in the United States mail with postage prepaid and properly addressed. For the purposes hereof, the addresses of the parties hereto shall be as may be designated by such party in a written notice to all of the other parties.

9.8 Further Assurances. ABL Agent and Term Loan Agent each agrees to take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as ABL Agent or Term Loan Agent may reasonably request to effectuate the terms of and the Lien priorities contemplated by this Agreement, all at the expense of Borrowers. In furtherance of the foregoing, (a) ABL Agent agrees that, if there is a

Refinancing of the Term Loan Debt and if the agent or other representative of the holders of the indebtedness that Refinances the Term Loan Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative, and (b) Term Loan Agent agrees that if there is a Refinancing of the ABL Debt and if the agent or other representative of the holders of the indebtedness that Refinances the ABL Debt so requests, it will execute and deliver either an acknowledgement of the joinder of such agent or representative to this Agreement or an agreement with such agent or representative identical to this Agreement (subject to changing names of parties, documents and addresses, as appropriate) in favor of any such agent or representative.

**9.9 APPLICABLE LAW. THIS AGREEMENT, THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF, AND THE RIGHTS OF THE PARTIES HERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR RELATED HERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAW OF THE STATE OF NEW YORK. EACH OF THE PARTIES HERETO AGREES THAT THIS AGREEMENT RELATES TO A TRANSACTION COVERING IN THE AGGREGATE NOT LESS THAN \$250,000.**

9.10 Binding on Successors and Assigns. This Agreement shall be binding upon ABL Agent, the ABL Claimholders, Term Loan Agent, the Term Loan Claimholders, and their respective successors and assigns.

9.11 Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

9.12 Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy or PDF or other electronic means shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

9.13 No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of and bind each of the ABL Claimholders and the Term Loan Claimholders. In no event shall any Grantor be a third party beneficiary of this Agreement.

9.14 Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the ABL Claimholders, on the one hand, and the Term Loan Claimholders on the other hand. No Grantor or any other creditor thereof shall have any rights hereunder and no Grantor may rely on the terms hereof. Nothing in this Agreement shall impair, as between Grantors and the ABL Claimholders, or as between Grantors and the Term Loan Claimholders, the obligations of

Grantors to pay principal, interest, fees and other amounts as provided in the ABL Documents and the Term Loan Documents, respectively. Nothing in this Agreement shall create vary or modify the rights or duties of the ABL Claimholders, *inter se*, under the ABL Documents or the rights or duties of the Term Loan Claimholders, *inter se*, under the Term Loan Documents.

9.15 Costs and Attorneys Fees. In the event it becomes necessary for ABL Agent or Term Loan Agent to commence or become a party to any proceeding or action to enforce the provisions of this Agreement, the court or body before which the same shall be tried shall award to the prevailing party all costs and expenses thereof, including reasonable attorneys fees, the usual and customary and lawfully recoverable court costs, and all other expenses in connection therewith.

9.16 Integration. This Agreement reflects the entire understanding of the parties with respect to the subject matter hereof and shall not be contradicted or qualified by any other agreement, oral or written, before the date hereof.

9.17 Reciprocal Rights. The parties agree that the provisions of Sections 2.3, 2.4(b), 3, 4.2, 5.1, 5.2, 6.2, 6.3, 6.4, 6.5, 6.6, 6.7, 6.9(b) and 9.5, including, as applicable, the defined terms referenced therein (but only to the extent used therein), which govern the relationship, and certain rights, restrictions, and agreements, between the ABL Claimholders with respect to the ABL Debt, on the one hand, and the Term Loan Claimholders with respect to the Term Loan Debt, on the other hand, with respect to the ABL Priority Collateral shall, from and after the Payment in Full of ABL Priority Debt and until Payment in Full of the Term Loan Priority Debt, apply to and govern, *mutatis mutandis*, the relationship between the Term Loan Claimholders as Priority Claimholders with respect to the Term Loan Priority Debt, on the one hand, and the ABL Claimholders as Junior Claimholders with respect to the Excess ABL Debt, on the other hand, with respect to the ABL Priority Collateral.

## **SECTION 10. Purchase Option.**

10.1 [Reserved].

### **10.2 Term Claimholder Purchase Option**

(a) Upon the occurrence and during the continuation of a Triggering Event, then, in any such case, any one or more of the Term Loan Claimholders (acting in their individual capacity or through one or more affiliates) shall have the right, but not the obligation (each Term Loan Claimholder having a ratable right to make the purchase, with each Term Loan Claimholder's right to purchase being automatically proportionately increased by the amount not purchased by another Term Loan Claimholder), upon 5 Business Days prior written notice from (or on behalf of) such Term Loan Claimholders (a "**Purchase Notice**") to ABL Agent to acquire from the ABL Claimholders all (but not less than all) of the right, title, and interest of the ABL Claimholders in and to the ABL Priority Debt and the ABL Documents. The Purchase Notice, if given, shall be irrevocable.

(b) On the date specified by Term Loan Agent in the Purchase Notice (which shall not be more than 5 Business Days after the receipt by ABL Agent of the Purchase Notice),

the ABL Claimholders shall sell to the purchasing Term Loan Claimholders and the purchasing Term Loan Claimholders shall purchase from the ABL Claimholders, the ABL Priority Debt.

(c) On the date of such purchase and sale, the purchasing Term Loan Claimholders shall

(i) pay to ABL Agent, for the benefit of the ABL Claimholders, as the purchase price therefor, the full amount of all the ABL Priority Debt, other than indemnification obligations for which no claim or demand for payment has been made at such time, and other than ABL Priority Debt cash collateralized in accordance with clause (c)(ii) below) then outstanding and unpaid,

(ii) furnish cash collateral to ABL Agent in such amounts as ABL Agent determines is reasonably necessary to secure ABL Agent and the ABL Claimholders in respect of (A) any issued and outstanding Letters of Credit (but not in any event in an amount greater than 105% (115% in the case of Letters of Credit denominated in a currency other than U.S. Dollars) of the aggregate undrawn amount of such Letters of Credit) (such cash collateral shall be applied to the reimbursement of any drawing under a Letter of Credit as and when such drawing is paid and, if a Letter of Credit expires undrawn, the cash collateral held by ABL Agent in respect of such Letter of Credit shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders) and (B) Bank Product Obligations (such cash collateral shall be applied to the reimbursement of the Bank Product Obligations as and when such obligations become due and payable and, at such time as all of the Bank Product Obligations are paid in full, the remaining cash collateral held by ABL Agent in respect of Bank Product Obligations shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders), and (C) any asserted or threatened (in writing) claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages that are the subject of the indemnification provisions of the ABL Credit Agreement (such cash collateral shall be applied to the reimbursement of such obligations as and when they become due and payable and, at such time as all of such obligations are paid in full, the remaining cash collateral held by ABL Agent in respect of indemnification obligations shall be remitted to the Term Loan Agent for the benefit of the purchasing Term Loan Claimholders), and

(iii) pay to ABL Agent and the other ABL Claimholders the amount of all expenses to the extent earned or due and payable in accordance with the ABL Documents (including the reimbursement of attorneys' fees, financial examination expenses, and appraisal fees).

(d) Such purchase price and cash collateral shall be remitted by wire transfer of federal funds to such bank account of ABL Agent as ABL Agent may designate in writing to Term Loan Agent for such purpose. Interest shall be calculated to but excluding the Business Day on which such purchase and sale shall occur if the amounts so paid by the purchasing Term Loan Claimholders to the bank account designated by ABL Agent are received in such bank account prior to 2:00 p.m., New York City time, and interest shall be calculated to and including such Business Day if the amounts so paid by the purchasing Term Loan Claimholders to the

bank account designated by ABL Agent are received in such bank account later than 2:00 p.m., New York City time.

(e) Anything contained in this paragraph to the contrary notwithstanding, in the event that (i) the purchasing Term Loan Claimholders receive all or a portion of any prepayment premium, make-whole obligation, or early termination fee payable pursuant to the ABL Documents in cash, (ii) all ABL Priority Debt purchased by such purchasing Term Loan Claimholders including principal, interest and fees thereon and costs and expenses of collection thereof (including reasonable attorneys' fees and legal expenses), is repaid in full in cash, and (iii) the ABL Credit Agreement is terminated, in each case, within 180 days following the date on which the purchasing Term Loan Claimholders pay the purchase price described in clauses (c)(i)-(iii) of this Section, then, within 3 Business Days after receipt by such Term Loan Claimholders of such amounts, the purchasing Term Loan Claimholders shall pay a supplemental purchase price to ABL Agent, for the benefit of the ABL Claimholders, in respect of their purchase under this Section in an amount equal to the portion of the prepayment premium, make-whole obligation or early termination fee received by the purchasing Term Loan Claimholders to which the ABL Claimholders would have been entitled to receive had the purchase under this Section not occurred.

(f) Such purchase shall be effected by the execution and delivery of a customary form of assignment and acceptance agreement and shall be expressly made without representation or warranty of any kind by ABL Agent and the other ABL Claimholders as to the ABL Priority Debt so purchased, or otherwise, and without recourse to ABL Agent or any other ABL Claimholder, except that each ABL Claimholder shall represent and warrant: (i) that the amount quoted by such ABL Claimholder as its portion of the purchase price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to the purchasing Term Loan Claimholders, the rights being transferred, and (iii) such transfer will be free and clear of Liens.

(g) In the event that any one or more of the Term Loan Claimholders exercises and consummates the purchase option set forth in this Section, (i) ABL Agent shall have the right, but not the obligation, to immediately resign under the ABL Credit Agreement, and (ii) the purchasing Term Loan Claimholders shall have the right, but not the obligation, to require ABL Agent to immediately resign under the ABL Credit Agreement.

(h) In the event that any one or more of the Term Loan Claimholders exercises and consummates the purchase option set forth in this Section, (i) the ABL Claimholders shall retain their indemnification rights under the ABL Credit Agreement for actions or other matters arising on or prior to the date of such purchase, and (ii) and in the event that, at the time of such purchase, there exists Excess ABL Debt, the consummation of such purchase option shall not include (nor shall the purchase price be calculated with respect to) such Excess ABL Debt (clauses (i) and (ii), the "**ABL Retained Interest**").

(i) In the event that an ABL Retained Interest exists, each ABL Claimholder shall, at the request of the purchasing Term Loan Claimholders, execute an amendment to the ABL Credit Agreement acknowledging that such ABL Retained Interest consisting of Excess ABL Debt is a last-out tranche, payable after Payment in Full of all ABL Priority Debt and



payment in full of all of the Term Debt. Interest with respect to such ABL Retained Interest consisting of Excess ABL Debt shall continue to accrue and be payable in accordance with the terms of the ABL Documents, the ABL Retained Interest shall continue to be secured by the Collateral, and the ABL Retained Interest shall be paid (or cash collateralized, as applicable) in accordance with the terms of the ABL Credit Agreement and this Agreement. Each ABL Claimholder shall continue to have all rights and remedies of a lender under the ABL Credit Agreement and the other ABL Documents; provided, that no ABL Claimholder shall have any right to vote on or otherwise consent to any amendment, waiver, departure from, or other modification of any provision of any ABL Document except that the consent of ABL Agent shall be required for (i) those matters that require the agreement of all lenders under the ABL Credit Agreement to reduce interest or principal and (ii) matters in contravention of the provisions and priorities set forth in this Agreement with respect to the ABL Retained Interest.

[signature pages follow]

**IN WITNESS WHEREOF**, the parties hereto have executed this Agreement as of the date first written above.

**WELLS FARGO CAPITAL FINANCE, LLC,**  
a Delaware limited liability company,  
as ABL Agent

By: Chris Heckman  
Name: Chris Heckman  
Title: Vice President

**BAYSIDE FINANCE, LLC,**  
a Delaware limited liability company,  
as Term Loan Agent

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

IN WITNESS WHEREOF, the parties hereto have executed this Agreement as of the date first written above.

**WELLS FARGO CAPITAL FINANCE, LLC,**  
a Delaware limited liability company,  
as ABL Agent

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

**BAYSIDE FINANCE, LLC,**  
a Delaware limited liability company,  
as Term Loan Agent

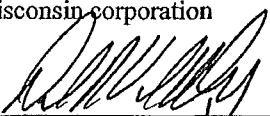
By: \_\_\_\_\_  
Name: JOHN ROLDAN  
Title: EXECUTIVE MANAGING DIRECTOR

### ACKNOWLEDGMENT

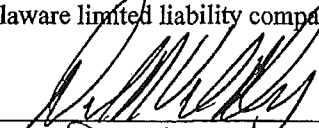
Each Borrower and each of its undersigned Subsidiaries each hereby acknowledge that they have received a copy of the foregoing Intercreditor Agreement (as in effect on the date hereof, the "Initial Intercreditor Agreement") and agree to recognize all rights granted by the Initial Intercreditor Agreement to the ABL Claimholders and the Term Loan Claimholders, waive the provisions of Section 9-615(a) of the UCC in connection with the application of proceeds of Collateral in accordance with the provisions of the Initial Intercreditor Agreement, agree that they will not do any act or perform any obligation which is not in accordance with the agreements set forth in the Initial Intercreditor Agreement. Each Borrower and each of its undersigned Subsidiaries each further acknowledge and agree that they are not an intended beneficiary or third party beneficiary under the Initial Intercreditor Agreement, as amended, restated, supplemented, or otherwise modified hereafter.

#### **ACKNOWLEDGED AS OF THE DATE FIRST WRITTEN ABOVE:**

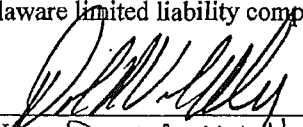
**SCHOOL SPECIALTY, INC.,**  
a Wisconsin corporation

By:   
Name: David N. Vander Ploeg  
Title: CFO

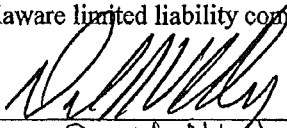
**CLASSROOMDIRECT.COM, LLC,**  
a Delaware limited liability company

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

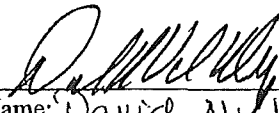
**DELTA EDUCATION, LLC,**  
a Delaware limited liability company

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

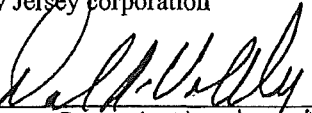
**SPORTIME, LLC,**  
a Delaware limited liability company

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

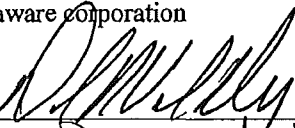
**CHILDCRAFT EDUCATION CORP.,**  
a New York corporation

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

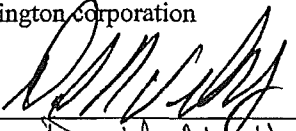
**BIRD-IN-HAND WOODWORKS, INC.,**  
a New Jersey corporation

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

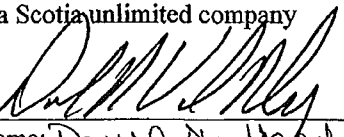
**CALIFONE INTERNATIONAL, INC.,**  
a Delaware corporation

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

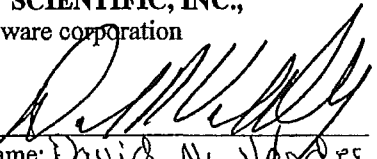
**PREMIER AGENDAS, INC.,**  
a Washington corporation

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

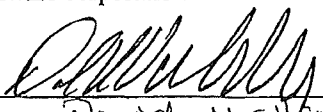
**SELECT AGENDAS, CORP.,**  
a Nova Scotia unlimited company

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

**FREY SCIENTIFIC, INC.,**  
a Delaware corporation

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

SAX ARTS & CRAFTS, INC.,  
a Delaware corporation

By:   
Name: David N. Vander Ploeg  
Title: Treasurer

**EXHIBIT C**

**ABL DIP Credit Agreement**



**DEBTOR-IN-POSSESSION CREDIT AGREEMENT**

**by and among**

**WELLS FARGO CAPITAL FINANCE, LLC**

**as Administrative Agent,**

**WELLS FARGO CAPITAL FINANCE, LLC and GENERAL ELECTRIC CAPITAL CORPORATION,**

**as Co-Collateral Agents,**

**WELLS FARGO CAPITAL FINANCE, LLC and GE CAPITAL MARKETS, INC.**

**as Co-Lead Arrangers and Joint Book Runners,**

**GENERAL ELECTRIC CAPITAL CORPORATION**

**as Syndication Agent,**

**THE LENDERS THAT ARE PARTIES HERETO**

**as the Lenders,**

**SCHOOL SPECIALTY, INC.  
CLASSROOMDIRECT.COM, LLC  
SPORTIME, LLC  
DELTA EDUCATION, LLC  
PREMIER AGENDAS, INC.  
CHILDCRAFT EDUCATION CORP.  
BIRD-IN-HAND WOODWORKS, INC.**

**and**

**CALIFONE INTERNATIONAL, INC.**

**as Borrowers**

**Dated as of January 28, 2013**

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## DEBTOR-IN-POSSESSION CREDIT AGREEMENT

THIS DEBTOR-IN-POSSESSION CREDIT AGREEMENT (this "Agreement"), is entered into as of January 28, 2013, by and among the lenders identified on the signature pages hereof (each of such lenders, together with its successors and permitted assigns, is referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, as administrative agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, and **GE CAPITAL MARKETS, INC.**, a Delaware corporation, as co-lead arrangers (in such capacities, together with their successors and assigns in such capacities, the "Co-Lead Arrangers"), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, and **GE CAPITAL MARKETS, INC.**, a Delaware corporation, as joint book runners (in such capacities, together with their successors and assigns in such capacities, the "Joint Book Runners"), **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation, as syndication agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, the "Syndication Agent"), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, and **GENERAL ELECTRIC CAPITAL CORPORATION**, a Delaware corporation, in their respective capacities as co-collateral agents for the Lenders (in such capacities, together with their successors and assigns in such capacities, "Co-Collateral Agents"), **SCHOOL SPECIALTY, INC.**, a Wisconsin corporation ("Parent"), **CLASSROOMDIRECT.COM, LLC**, a Delaware limited liability company ("ClassroomDirect"), **SPORTIME, LLC**, a Delaware limited liability company ("Sportime"), **DELTA EDUCATION, LLC**, a Delaware limited liability company ("Delta Education"), **PREMIER AGENDAS, INC.**, a Washington corporation ("Premier Agendas"), **CHILDCRAFT EDUCATION CORP.**, a New York corporation ("Childcraft"), **BIRD-IN-HAND WOODWORKS, INC.**, a New Jersey corporation ("Bird-In-Hand"), and **CALIFONE INTERNATIONAL, INC.**, a Delaware corporation ("Califone"; Parent, ClassroomDirect, Sportime, Delta Education, Premier Agendas, Childcraft, Bird-In-Hand and Califone are collectively "Borrowers" and each a "Borrower").

WHEREAS, on [ ] (the "Filing Date"), Borrowers and Guarantors (other than Select Agendas, Corp.) filed voluntary petitions for relief under chapter 11 of the Bankruptcy Code (as hereinafter defined) in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court");

WHEREAS, Borrowers are continuing to operate their businesses and manage their properties as debtors-in-possession under Sections 1107 and 1108 of the Bankruptcy Code;

WHEREAS, Borrowers have requested that Lenders provide a secured revolving credit facility to Borrowers in order to (i) fund the continued operation of Borrowers' businesses as debtor and debtor-in-possession under the Bankruptcy Code and (ii) repay in full the Existing Secured Obligations (as hereinafter defined); and



WHEREAS, the Lenders are willing to make available to Borrowers such postpetition loans, other extensions of credit and financial accommodations upon the terms and subject to the conditions set forth herein.

The parties agree as follows:

1. **DEFINITIONS AND CONSTRUCTION.**

1.1. **Definitions.** Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2. **Accounting Terms.** All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, that if Administrative Borrower notifies Agent that Borrowers request an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Administrative Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrowers agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrowers after such Accounting Change conform as nearly as possible to their respective positions prior to such Accounting Change and, until any such amendments have been agreed upon and agreed to by the Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Parent" is used in respect of a financial covenant or a related definition, it shall be understood to mean Parent and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise. Notwithstanding anything to the contrary contained herein, (a) all financial statements delivered hereunder shall be prepared, and all financial covenants contained herein shall be calculated, without giving effect to any election under the Statement of Financial Accounting Standards No. 159 (or any similar accounting principle) permitting a Person to value its financial liabilities or Indebtedness at the fair value thereof, and (b) the term "unqualified opinion" as used herein to refer to opinions or reports provided by accountants shall mean an opinion or report that is (i) unqualified, and (ii) does not include any explanation, supplemental comment, or other comment concerning the ability of the applicable Person to continue as a going concern or concerning the scope of the audit.

1.3. **Code.** Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase

"and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean (a) the payment or repayment in full in immediately available funds of (i) the principal amount of, and interest accrued and unpaid with respect to, all outstanding Loans, together with the payment of any premium applicable to the repayment of the Loans, (ii) all Lender Group Expenses that have accrued and are unpaid regardless of whether demand has been made therefor, (iii) all fees or charges that have accrued hereunder or under any other Loan Document (including the Letter of Credit Fee and the Unused Line Fee) and are unpaid, (b) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, (c) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization, (d) the receipt by Agent of cash collateral in order to secure any other contingent Obligations for which a claim or demand for payment has been made on or prior to such time or in respect of matters or circumstances known to Agent or a Lender at such time that are reasonably expected to result in any loss, cost, damage, or expense (including attorneys' fees and legal expenses), such cash collateral to be in such amount as Agent reasonably determines is appropriate to secure such contingent Obligations, (e) the payment or repayment in full in immediately available funds of all other outstanding Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid, and (f) the termination of all of the Commitments of the Lenders. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Time References.** Unless the context of this Agreement or any other Loan Document clearly requires otherwise, all references to time of day refer to Central standard time or Central daylight saving time, as in effect in Chicago, Illinois on such day. For purposes of the computation of a period of time from a specified date to a later specified date, the word "from" means "from and including" and the words "to" and "until" each means "to and including"; provided that, with respect to a computation of fees or interest payable to Agent or any Lender, such period shall in any event consist of at least one full day.

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

## 2. **LOANS AND TERMS OF PAYMENT.**

### 2.1. **Revolving Loans.**

(a) Subject to the terms and conditions of this Agreement, and during the term of this Agreement, each Revolving Lender agrees (severally, not jointly or jointly and severally) to make revolving loans ("Revolving Loans") to Borrowers in an amount at any one time outstanding not to exceed the lesser of:

(i) such Lender's Revolver Commitment, and

(ii) such Lender's Pro Rata Share of an amount equal to the lesser of:

(A) the amount equal to (1) the Maximum Revolver Amount less the Availability Reserve less (2) the sum of (y) the Letter of Credit Usage at such time, plus (z) the principal amount of Swing Loans outstanding at such time less (3) the amount of any Reinstated Existing Secured Obligations less (4) the Existing Secured Obligations then outstanding, and

(B) the amount equal to

(1) the Borrowing Base as of such date (based upon the most recent Borrowing Base Certificate delivered by Administrative Borrower to Co-Collateral Agents) less

(2) the sum of (x) the Letter of Credit Usage at such time, plus (y) the principal amount of Swing Loans outstanding at such time less

(3) the amount of any Reinstated Existing Secured Obligations less

(4) the amount of any Existing Secured Obligations then outstanding.

Notwithstanding the foregoing, (x) the aggregate Revolving Loans made during any week shall not exceed (i) for the first two weeks following the Filing Date, 115% of the aggregate uses of cash set forth for such week in the Budget, and (ii) for each full week thereafter, 110% of the aggregate uses of cash set forth for such week in the Budget, (y) the aggregate principal amount of the Revolving Loans at any time outstanding during any week shall not exceed the projected outstanding Revolving Loans set forth in the Budget for such week and (z) the Revolving Loans shall be used by Borrowers solely as set forth in Section 6.11.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Revolving Loans, together with interest

accrued and unpaid thereon, shall constitute Obligations and shall be due and payable on the Maturity Date, the Required Prepayment Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Co-Collateral Agents shall have the right (but not the obligation), in the exercise of their Permitted Discretion, to establish and increase or decrease or eliminate Receivable Reserves, Inventory Reserves, Bank Product Reserves, Reserves to address the results of any audit or appraisal performed by or on behalf of Co-Collateral Agents from time to time after the Closing Date, Reserves with respect to the Carveout, Reserves with respect to other potential costs and expenses pertaining to the Bankruptcy Cases, Reserves with respect to Other Statutory Liabilities and other Reserves against the Borrowing Base (or any component thereof) or the Maximum Revolver Amount. The amount of any such Reserve established by Co-Collateral Agents shall have a reasonable relationship to the event, condition, other circumstance, or fact that is the basis for such reserve and shall not be duplicative of any other reserve established and currently maintained.

2.2. **Intentionally Omitted.**

2.3. **Borrowing Procedures and Settlements.**

(a) **Procedure for Borrowing Revolving Loans.** Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent and received by Agent no later than 10:30 a.m. (i) on the Business Day that is the requested Funding Date in the case of a request for a Swing Loan, and (ii) on the Business Day that is 1 Business Day prior to the requested Funding Date in the case of all other requests, specifying (A) the amount of such Borrowing, and (B) the requested Funding Date (which shall be a Business Day); provided, that Agent may, in its sole discretion, elect to accept as timely requests that are received later than 10:30 a.m. on the applicable Business Day. At Agent's election, in lieu of delivering the above-described written request, any Authorized Person may give Agent telephonic notice of such request by the required time. In such circumstances, Borrowers agree that any such telephonic notice will be confirmed in writing within 24 hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request.

(b) **Making of Swing Loans.** In the case of a request for a Swing Loan and so long as the aggregate amount of Swing Loans made since the last Settlement Date, minus all payments or other amounts applied to Swing Loans since the last Settlement Date, plus the amount of the requested Swing Loan does not exceed \$20,000,000, and Swing Lender, in its sole discretion, agrees to make a Swing Loan, Swing Lender shall make a Revolving Loan (any such Revolving Loan made by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and all such Revolving Loans being referred to as "Swing Loans") available to Borrowers on the Funding Date applicable thereto by transferring immediately available funds in the amount of such requested Borrowing to the Designated Account. Each Swing Loan shall be deemed to be a Revolving Loan hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Revolving Loans, except that all payments (including interest) on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of

the applicable conditions precedent set forth in Section 3 (including, without limitation, the conditions precedent set forth in the final paragraph of Section 3.2 hereof) will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Revolving Loans and Obligations, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans.

**(c) Making of Revolving Loans.**

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders by telecopy, telephone, email, or other electronic form of transmission, of the requested Borrowing; such notification to be sent on the Business Day that is 1 Business Day prior to the requested Funding Date. If Agent has notified the Lenders of a requested Borrowing on the Business Day that is 1 Business Day prior to the Funding Date, then each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. on the Business Day that is the requested Funding Date. After Agent's receipt of the proceeds of such Revolving Loans from the Lenders, Agent shall make the proceeds thereof available to Borrowers on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, that, subject to the provisions of Section 2.3(d)(ii), no Lender shall have an obligation to make any Revolving Loan, if (1) one or more of the applicable conditions precedent set forth in Section 3 (including, without limitation, the conditions precedent set forth in the final paragraph of Section 3.2 hereof) will not be satisfied on the requested Funding Date for the applicable Borrowing unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:30 a.m. on the Business Day that is the requested Funding Date relative to a requested Borrowing as to which Agent has notified the Lenders of a requested Borrowing that such Lender will not make available as and when required hereunder to Agent for the account of Borrowers the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrowers a corresponding amount. If, on the requested Funding Date, any Lender shall not have remitted the full amount that it is required to make available to Agent in immediately available funds and if Agent has made available to Borrowers such amount on the requested Funding Date, then such Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, no later than 10:00 a.m. on the Business Day that is the first Business Day after the requested Funding Date (in which case, the interest accrued on such Lender's portion of such Borrowing for the Funding Date shall be for Agent's separate account). If any Lender shall not remit the full amount that it is required to make available to Agent in immediately available funds as and when required hereby and if Agent has made available to Borrowers such amount, then that Lender

shall be obligated to immediately remit such amount to Agent, together with interest at the Defaulting Lender Rate for each day until the date on which such amount is so remitted. A notice submitted by Agent to any Lender with respect to amounts owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If the amount that a Lender is required to remit is made available to Agent, then such payment to Agent shall constitute such Lender's Revolving Loan for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Administrative Borrower of such failure to fund and, upon demand by Agent, Borrowers shall pay such amount to Agent, together with interest thereon for each day elapsed since the date of such Borrowing, for Agent's Account, at a rate per annum equal to the interest rate applicable at the time to the Revolving Loans composing such Borrowing.

**(d) Protective Advances and Optional Overadvances.**

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.3(d)(iii), at any time (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, Agent hereby is authorized by Borrowers and the Lenders, from time to time (until such time as either Co-Collateral Agent shall revoke such authority), in Agent's sole discretion, to make Revolving Loans to, or for the benefit of, Borrowers, on behalf of the Revolving Lenders, that Agent, in its Permitted Discretion, deems necessary or desirable (1) to preserve or protect the Collateral, or any portion thereof, (2) to enhance the likelihood of repayment of the Obligations (other than the Bank Product Obligations) (the Revolving Loans described in this Section 2.3(d)(i) shall be referred to as "Protective Advances"), or (3) to pay any other amount chargeable to Borrowers pursuant to the terms of this Agreement, including Lender Group Expenses and the costs, fees and expenses described in Section 9. Notwithstanding the foregoing, unless Required Lenders otherwise consent, the aggregate amount of all Protective Advances outstanding at any one time shall not exceed \$20,000,000.

(A) Any contrary provision of this Agreement or any other Loan Document notwithstanding, but subject to Section 2.3(d)(iii), the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to (until such time as either Co-Collateral Agent shall revoke such authority), knowingly and intentionally, continue to make Revolving Loans (including Swing Loans) to Borrowers notwithstanding that an Overadvance exists or would be created thereby, so long as (A) after giving effect to such Revolving Loans, the outstanding Revolver Usage does not, unless Required Lenders otherwise consent, exceed the Borrowing Base by more than \$20,000,000, and (B) after giving effect to such Revolving Loans, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that the Revolver Usage exceeds the amounts permitted by the immediately foregoing provisions, regardless of the amount of, or reason for, such excess, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and

provide notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent and Co-Collateral Agents, jointly determine the terms of arrangements that shall be implemented with Borrowers intended to reduce, within a reasonable time, the outstanding principal amount of the Revolving Loans to Borrowers to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. The foregoing provisions are meant for the benefit of the Lenders, Co-Collateral Agents and Agent and are not meant for the benefit of Borrowers, which shall continue to be bound by the provisions of Section 2.4(e)(1). Each Lender with a Revolver Commitment shall be obligated to make Revolving Loans in accordance with Section 2.3(c) in, or settle Overadvances made by Agent with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for, the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(d)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(ii) Each Protective Advance and each Overadvance (each, an "Extraordinary Advance") shall be deemed to be a Revolving Loan hereunder, except that no Extraordinary Advance shall be eligible to be a LIBOR Rate Loan and, prior to Settlement therefor, all payments on the Extraordinary Advances, including interest thereon, shall be payable to Agent solely for its own account. The Extraordinary Advances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Revolving Loans that are Base Rate Loans. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Co-Collateral Agents, Swing Lender, and the Lenders and are not intended to benefit Borrowers (or any other Loan Party) in any way.

(iii) Notwithstanding anything contained in this Agreement or any other Loan Document to the contrary: (A) unless Required Lenders otherwise consent no Extraordinary Advance may be made by Agent if such Extraordinary Advance would cause the aggregate principal amount of Extraordinary Advances outstanding to exceed an amount equal to 10% of the Maximum Revolver Amount; (B) no Protective Advance shall be permitted that causes the aggregate Revolver Usage to exceed the Maximum Revolver Amount; (C) no Lender shall be required to make any Revolving Loan (including reimbursement to Agent of any Extraordinary Advances) in excess of the amount of its Revolver Commitment; and (D) no Extraordinary Advance shall be made that causes the aggregate ABL Debt (as defined in the Split Lien Intercreditor Agreement) to exceed the ABL Cap (as defined in the Split Lien Intercreditor Agreement), without the written consent of each Lender.

(e) **Settlement.** It is agreed that each Lender's funded portion of the Revolving Loans is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Revolving Loans. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrowers) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Revolving Loans (including the Swing Loans and the Extraordinary Advances) shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent in its sole discretion (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Extraordinary Advances, and (3) with respect to Loan Parties' payments or other amounts received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Swing Loans, Extraordinary Advances and other Revolving Loans for the period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Revolving Loans (including Swing Loans, and Extraordinary Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans, and Extraordinary Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans, and Extraordinary Advances), and (z) if the amount of the Revolving Loans (including Swing Loans, and Extraordinary Advances) made by a Lender is less than such Lender's Pro Rata Share of the Revolving Loans (including Swing Loans, and Extraordinary Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Revolving Loans (including Swing Loans and Extraordinary Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Extraordinary Advances, shall constitute Revolving Loans of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Revolving Loans (including Swing Loans and Extraordinary Advances) is less than, equal to, or greater than such Lender's Pro Rata Share of the Revolving Loans as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrowers and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Extraordinary Advances for the account of Agent or Swing Loans for the account of Swing Lender are outstanding, may pay over to Agent or Swing Lender, as applicable, any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Revolving Loans, for application to the Extraordinary Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Extraordinary Advances or Swing Loans are outstanding, may pay over to Swing Lender any payments or other amounts received by Agent, that in accordance with the terms of this Agreement would be applied to the



reduction of the Revolving Loans, for application to Swing Lender's Pro Rata Share of the Revolving Loans. If, as of any Settlement Date, payments or other amounts of Loan Parties received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Revolving Loans other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the provisions of Section 2.3(g)), to be applied to the outstanding Revolving Loans of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Revolving Loans. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Extraordinary Advances, and each Lender with respect to the Revolving Loans other than Swing Loans and Extraordinary Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation.** Agent, as a non-fiduciary agent for Borrowers, shall maintain a register showing the principal amount of the Revolving Loans, owing to each Lender, including the Swing Loans owing to Swing Lender, and Extraordinary Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders.**

(i) Notwithstanding the provisions of Section 2.4(b)(ii), Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrowers to Agent for the Defaulting Lender's benefit or any proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Agent to the extent of any Extraordinary Advances that were made by Agent and that were required to be, but were not, paid by Defaulting Lender, (B) second, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, paid by the Defaulting Lender, (C) third, to Issuing Lender, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, paid by the Defaulting Lender, (D) fourth, to each Non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of a Revolving Loan (or other funding obligation) was funded by such other Non-Defaulting Lender), (E) fifth, in Agent's sole discretion, to a suspense account maintained by Agent, the proceeds of which may be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrowers (upon the request of Administrative Borrower and subject to the conditions set forth in Section 3.2) as if such Defaulting Lender had made its portion of Revolving Loans (or other funding obligations) hereunder, and (F) sixth, from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(ii). Subject to the

foregoing, Agent may hold and, in its discretion, prior to the occurrence and continuance of an Application Event, re-lend to Borrowers for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero; provided, that the foregoing shall not apply to any of the matters governed by Section 14.1(a)(i) through (iii). The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which all of the Non-Defaulting Lenders, Agent, Issuing Lender, and Borrowers shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder (on which earlier date, so long as no Event of Default has occurred and is continuing, any remaining cash collateral held by Agent pursuant to Section 2.3(g)(ii) shall be released to Borrowers). The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrowers of their duties and obligations hereunder to Agent, Issuing Lender, or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrowers, at their option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being paid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of its participation in the Letters of Credit); provided, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrowers' rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(ii) If any Swing Loan or Letter of Credit is outstanding at the time that a Lender becomes a Defaulting Lender then:

(A) such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure shall be reallocated among the Non-Defaulting Lenders in accordance with

their respective Pro Rata Shares but only to the extent (x) the sum of all Non-Defaulting Lenders' Revolving Loan Exposures plus such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure does not exceed the total of all Non-Defaulting Lenders' Revolver Commitments, (y) the sum of each Non-Defaulting Lenders' Revolving Loan Exposures plus its Pro Rata Share of such Defaulting Lender's Swing Loan Exposure and Letter of Credit Exposure does not exceed such Non-Defaulting Lenders' Revolver Commitments, and (z) the conditions set forth in Section 3.2 are satisfied at such time;

(B) if the reallocation described in clause (A) above cannot, or can only partially, be effected, Borrowers shall within one Business Day following notice by the Agent (x) first, prepay such Defaulting Lender's Swing Loan Exposure (after giving effect to any partial reallocation pursuant to clause (A) above) and (y) second, cash collateralize such Defaulting Lender's Letter of Credit Exposure (after giving effect to any partial reallocation pursuant to clause (A) above), pursuant to a cash collateral agreement to be entered into in form and substance reasonably satisfactory to the Agent, for so long as such Letter of Credit Exposure is outstanding; provided, that Borrowers shall not be obligated to cash collateralize any Defaulting Lender's Letter of Credit Exposure if such Defaulting Lender is also the Issuing Lender;

(C) if Borrowers cash collateralizes any portion of such Defaulting Lender's Letter of Credit Exposure pursuant to this Section 2.3(g)(ii), Borrowers shall not be required to pay any Letter of Credit Fees to Agent for the account of such Defaulting Lender pursuant to Section 2.6(b) with respect to such cash collateralized portion of such Defaulting Lender's Letter of Credit Exposure during the period such Letter of Credit Exposure is cash collateralized;

(D) to the extent the Letter of Credit Exposure of the Non-Defaulting Lenders is reallocated pursuant to this Section 2.3(g)(ii), then the Letter of Credit Fees payable to the Non-Defaulting Lenders pursuant to Section 2.6(b) shall be adjusted in accordance with such Non-Defaulting Lenders' Letter of Credit Exposure;

(E) to the extent any Defaulting Lender's Letter of Credit Exposure is neither cash collateralized nor reallocated pursuant to this Section 2.3(g)(ii), then, without prejudice to any rights or remedies of the Issuing Lender or any Lender hereunder, all Letter of Credit Fees that would have otherwise been payable to such Defaulting Lender under Section 2.6(b) with respect to such portion of such Letter of Credit Exposure shall instead be payable to the Issuing Lender until such portion of such Defaulting Lender's Letter of Credit Exposure is cash collateralized or reallocated;

(F) so long as any Lender is a Defaulting Lender, the Swing Lender shall not be required to make any Swing Loan and the Issuing Lender shall not be required to issue, amend, or increase any Letter of Credit, in each case, to the extent (x) the Defaulting Lender's Pro Rata Share of such Swing Loans or Letter of Credit cannot be reallocated pursuant to this Section 2.3(g)(ii) or (y) the Swing Lender or Issuing Lender, as applicable, has not otherwise entered into arrangements reasonably satisfactory to the Swing Lender or Issuing Lender, as applicable, and Borrowers to eliminate the Swing Lender's or

Issuing Lender's risk with respect to the Defaulting Lender's participation in Swing Loans or Letters of Credit; and

(G) Agent may release any cash collateral provided by Borrowers pursuant to this Section 2.3(g)(ii) to the Issuing Lender and the Issuing Lender may apply any such cash collateral to the payment of such Defaulting Lender's Pro Rata Share of any Letter of Credit Disbursement that is not reimbursed by Borrowers pursuant to Section 2.11(a).

(h) **Independent Obligations.** All Revolving Loans (other than Swing Loans, Protective Advances and, at Agent's election, Overadvances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Revolving Loan (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

#### 2.4. **Payments; Reductions of Commitments; Prepayments.**

##### (a) **Payments by Borrowers.**

(i) Except as otherwise expressly provided herein, all payments by Borrowers shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 1:30 p.m. on the date specified herein. Any payment received by Agent later than 1:30 p.m. shall be deemed to have been received (unless Agent, in its sole discretion, elects to credit it on the date received) on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Administrative Borrower prior to the date on which any payment is due to the Lenders that Borrowers will not make such payment in full as and when required, Agent may assume that Borrowers have made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrowers do not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

##### (b) **Apportionment and Application.**

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of any Co-Collateral Agent or

for the separate account of Issuing Lender) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates. Subject to Section 2.4(b)(iv) and Section 2.4(e), all payments to be made hereunder by Borrowers shall be remitted to Agent and all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, first, to reduce the balance of the Existing Secured Obligations in the manner set forth in the Existing Loan Agreement, second, to reduce the balance of the Revolving Loans outstanding and, third, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(ii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to reduce the balance of the Existing Secured Obligations in the manner set forth in the Existing Loan Agreement,

(B) second, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent and Co-Collateral Agents under the Loan Documents, until paid in full,

(C) third, to pay any fees or premiums then due to Agent and Co-Collateral Agents under the Loan Documents until paid in full,

(D) fourth, to pay interest due in respect of all Protective Advances until paid in full,

(E) fifth, to pay the principal of all Protective Advances until paid in full,

(F) sixth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(G) seventh, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(H) eighth, to pay interest accrued in respect of the Swing Loans until paid in full,

(I) ninth, to pay the principal of all Swing Loans until paid in full,

(J) tenth, ratably, to pay interest accrued in respect of the Revolving Loans until paid in full,

(K) eleventh, ratably

i. to pay the principal of all Revolving Loans until paid in full,

ii. to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of Issuing Lender, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 110% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof),

iii. ratably, up to the aggregate amount (after taking into account any amounts previously paid pursuant to this clause iii. during the continuation of the applicable Application Event) of the most recently established Bank Product Reserve, which amount was established prior to the occurrence of, and not in contemplation of, the subject Application Event, to Agent for the ratable benefit of the Bank Product Providers (such ratable benefit to be determined based on the ratio of the Bank Product Reserve established for each Bank Product of a Bank Product Provider to the aggregate Bank Product Reserve established for all Bank Products provided by all Bank Product Providers), to be either (I) disbursed by Agent to the Bank Product Providers based upon amounts then certified by the applicable Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations or (II) held by Agent as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof,

(L) twelfth, ratably, to pay any other Obligations other than Obligations owed to Defaulting Lenders (including being paid, ratably, to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations, with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof),

(M) thirteenth, ratably to pay any Obligations owed to Defaulting Lenders; and

(N) fourteenth, to Borrowers (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(iv) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by Borrowers to Agent and specified by Borrowers to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(v) For purposes of Section 2.4(b)(ii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Commitments.** The Revolver Commitments shall terminate on the earlier of the Maturity Date or the Required Prepayment Date. With not less than 5 Business Days written notice to Agent, Borrowers may reduce the Revolver Commitments, without premium or penalty, to an amount not less than the sum of (A) the Revolver Usage as of such date, plus (B) the principal amount of all Revolving Loans not yet made as to which a request has been given by Borrowers under Section 2.3(a), plus (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrowers pursuant to Section 2.11(a). Each such reduction shall be in an amount which is not less than \$20,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than \$20,000,000), shall be made by providing not less than 5 Business Days prior written notice to Agent, and shall be irrevocable. Once reduced, the Revolver Commitments may not be increased. Each such reduction of the Revolver Commitments shall reduce the Revolver Commitments of each Lender proportionately in accordance with its ratable share thereof.

(d) **Optional Prepayments.** With not less than 5 Business Days written notice to Agent, Borrowers may prepay the principal of any Revolving Loan at any time in whole or in part but with any amounts due under Section 2.12(b)(ii).

(e) **Mandatory Prepayments.**

(i) **Borrowing Base.** If, at any time, (A) the Revolver Usage on such date exceeds (B) the Borrowing Base reflected in the Borrowing Base Certificate most recently delivered by Borrowers to Agent, then Borrowers shall immediately prepay the Obligations in accordance with Section 2.4(g) in an aggregate amount equal to the amount of such excess.

(ii) **Dispositions.** Upon receipt by any Loan Party of the Net Cash Proceeds of any voluntary or involuntary sale or disposition by such Loan Party of ABL Priority Collateral (or if the Indebtedness under the Split Lien Documents has been paid in full, in accordance with the Split Lien Intercreditor Agreement, the Collateral) (including casualty losses or condemnations but excluding sales or dispositions which qualify as Permitted Dispositions under clauses (b), (c), (d), or (f) of the definition of Permitted Dispositions), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(g) in an amount equal to 100% of such Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by such Person in connection with such sales or dispositions. Nothing contained in this Section 2.4(e)(ii) shall permit Parent or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(iii) **Extraordinary Receipts.** Upon receipt by any Loan Party of any Extraordinary Receipts constituting ABL Priority Collateral (or if the Indebtedness under the Split Lien Documents has been paid in full, in accordance with the Split Lien Intercreditor Agreement, the Collateral), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(g) in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts.

(iv) **Indebtedness.** Within 1 Business Day of the date of incurrence by Parent or any of its Subsidiaries of any Indebtedness (other than Permitted Indebtedness), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(g) in an amount equal to 50% of the Net Cash Proceeds received by such Person in connection with such incurrence. The provisions of this Section 2.4(e)(iv) shall not be deemed to be implied consent to any such incurrence otherwise prohibited by the terms of this Agreement.

(v) **Equity.** Within 1 Business Day of the date of the issuance by Parent or any of its Subsidiaries of any Equity Interests (other than the issuance of Equity Interest by a Subsidiary of Parent to a Loan Party), Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(g) in an amount equal to 50% of the Net Cash Proceeds received by such Person in connection with such issuance. The provisions of this Section 2.4(e)(v) shall not be deemed to be implied consent to any such issuance otherwise prohibited by the terms of this Agreement.



(vi) **Business Interruption Insurance.** Upon the receipt by Parent or any of its Subsidiaries of any proceeds of business interruption insurance, Borrowers shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(g) in an amount equal to 50% of the proceeds received by such Person in connection with such of business interruption insurance.

(vii) **Disgorgement.** In the event that the Lenders are required to repay or disgorge to Borrowers or any representatives of the Borrowers' estate (as agents, with derivative standing or otherwise) all or any portion of the Existing Secured Obligations authorized and directed to be repaid pursuant to the Financing Order, or any payment on account of the Existing Secured Obligations made to any Lender is rescinded for any reason whatsoever, including, but not limited to, as a result of any Avoidance Action, or any other action, suit, proceeding or claim brought under any other provision of any applicable Bankruptcy Code or any applicable state or provincial law, or any other similar provisions under any other state, federal or provincial statutory or common law (all such amounts being hereafter referred to as the "Avoided Payments"), then, in such event, Borrowers shall prepay the outstanding principal amount of the Revolving Loans in an amount equal to 100% of such Avoided Payments immediately upon receipt of the Avoided Payments by Borrowers or any representative of the Borrowers' estate.

(viii) **Financing Orders.** To the extent authorized by the Financing Orders, Borrowers shall prepay 100% of the Existing Secured Obligations outstanding at such time.

(f) **Letter of Credit Obligations.** In the event any Letters of Credit are outstanding at the time that the Revolver Commitments are terminated or Letters of Credit are required to be cash collateralized at any time pursuant to the terms of this Agreement, Borrowers shall deposit with Agent for the benefit of all Lenders cash in an amount equal to 110% of the aggregate outstanding obligations and Reimbursement Undertakings in connection with such Letters of Credit to be available to Agent to reimburse payments of drafts drawn under such Letters of Credit and pay any fees and expenses related thereto.

(g) **Application of Payments.** Each prepayment pursuant to Section 2.4(e) shall be applied in the manner set forth in Section 2.4(b)(ii). No prepayment under this Section 2.4(g) shall result in a permanent reduction of the Maximum Revolver Amount or the Revolver Commitments.

2.5. **Promise to Pay.** Borrowers agree to pay the Lender Group Expenses on the earlier of (a) the first day of the calendar month following the date on which the applicable Lender Group Expenses were first incurred or (b) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of Section 2.6(d) shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (b)). Borrowers promise to pay all of the Obligations (including principal, interest, premiums, if any, fees, costs, and expenses (including Lender Group Expenses)) in full on the Maturity Date, the Required Prepayment Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement.

Borrowers agree that their obligations contained in the first sentence of this Section 2.5 shall survive payment or satisfaction in full of all other Obligations.

**2.6. Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations.**

(a) **Interest Rates.** Except as provided in Section 2.6(c), all Revolving Loans and all other Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest as follows:

(i) if the relevant Obligation is a LIBOR Rate Loan, at a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin, and

(ii) otherwise, at a per annum rate equal to the Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee.** Borrowers shall pay Agent (for the ratable benefit of the Revolving Lenders), a Letter of Credit fee (the "Letter of Credit Fee") (which fee shall be in addition to the fees, charges, commissions, and costs set forth in Section 2.11(j)) that shall accrue at a per annum rate equal to the LIBOR Rate Margin times the undrawn amount of all outstanding Letters of Credit.

(c) **Default Rate.** Upon the occurrence and during the continuation of an Event of Default and at the election of Agent or the Required Lenders,

(i) all Revolving Loans and all other Obligations (except for undrawn Letters of Credit) that have been charged to the Loan Account pursuant to the terms hereof shall bear interest at a per annum rate equal to 3 percentage points above the per annum rate otherwise applicable thereunder, and

(ii) the Letter of Credit Fee shall be increased to 3 percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.10 or Section 2.12(a), (i) all interest, all Letter of Credit Fees, and all other fees payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first day of each month, and (ii) all costs and expenses payable hereunder or under any of the other Loan Documents, and all Lender Group Expenses shall be due and payable on the earlier of (x) the first day of the month following the date on which the applicable costs, expenses, or Lender Group Expenses were first incurred or (y) the date on which demand therefor is made by Agent (it being acknowledged and agreed that any charging of such costs, expenses or Lender Group Expenses to the Loan Account pursuant to the provisions of the following sentence shall be deemed to constitute a demand for payment thereof for the purposes of this subclause (y)). Borrowers hereby authorize Agent, from time to time without prior notice to Borrowers, to charge to the Loan Account (A) on the first day of each month, all interest accrued during the prior month on the Revolving Loans hereunder, (B) on the first day of each month, all Letter of Credit Fees accrued or chargeable hereunder during the prior month, (C) on the first day of each month, the Unused Line Fee accrued during the prior month pursuant to Section 2.10(b), (D) as

and when incurred or accrued, all audit, appraisal, valuation, or other charges or fees payable hereunder, including pursuant to Section 2.10(a) and (c), (E) as and when due and payable, all other fees payable hereunder or under any of the other Loan Documents, (F) as and when incurred or accrued, all fees, charges, commissions, and costs provided for in Section 2.11(j), (G) as and when incurred or accrued, all other Lender Group Expenses, and (H) as and when due and payable all other payment obligations payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products). All amounts (including interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement) charged to the Loan Account shall thereupon constitute Revolving Loans hereunder, shall constitute Obligations hereunder, and shall initially accrue interest at the rate then applicable to Revolving Loans that are Base Rate Loans (unless and until converted into LIBOR Rate Loans in accordance with the terms of this Agreement).

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

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

2.7. **Crediting Payments.** The receipt of any payment item by Agent shall not be required to be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrowers shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 1:30 p.m. If any payment item is received into Agent's Account on a non-Business Day or after 1:30 p.m. on a Business Day (unless Agent, in its sole discretion, elects to credit it on the date received), it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8. **Designated Account.** Agent is authorized to make the Revolving Loans, and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon

telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrowers agree to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Revolving Loans requested by Borrowers and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrowers, any Revolving Loan requested by Borrowers and made by Agent, Swing Lender or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations.** Agent shall maintain an account on its books in the name of Borrowers (the "Loan Account") on which Borrowers will be charged with all Revolving Loans (including Extraordinary Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrowers or for Borrowers' account, the Letters of Credit issued or arranged by Issuing Lender for Borrowers' account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrowers or for Borrowers' account. Agent shall make available to Borrowers monthly statements regarding the Loan Account, including the principal amount the Revolving Loans, interest accrued hereunder, fees accrued or charged hereunder or under the other Loan Documents, and a summary itemization of all charges and expenses constituting Lender Group Expenses accrued hereunder or under the other Loan Documents, and each such statement, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrowers and the Lender Group unless, within 30 days after Agent first makes such a statement available to Borrowers, Borrowers shall deliver to Agent written objection thereto describing the error or errors contained in such statement.

2.10. **Fees.**

(a) **Agent Fee.** Borrowers shall pay to Agent, for the account of Agent, as and when due and payable under the terms of the Fee Letter, the agent fee set forth in the Fee Letter.

(b) **Unused Line Fee.** Borrowers shall pay to Agent, for the ratable account of the Revolving Lenders, on the first day of each month from and after the Closing Date up to the first day of the month prior to the date on which the Obligations are paid in full and on the date on which the Obligations are paid in full, an unused line fee (the "Unused Line Fee") in an amount equal to the Applicable Unused Line Fee Percentage per annum times the result of (i) the aggregate amount of the Revolver Commitments, less (ii) the average amount of the Revolver Usage during the immediately preceding month (or portion thereof).

(c) **Field Examination and Other Fees.** Borrowers shall pay to Agent or either Co-Collateral Agent, as applicable, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) a fee of \$1,000 (or the then prevailing rate) per day, per examiner, plus out-of-pocket expenses (including travel, meals, and lodging) for each field examination of Loan Parties performed by personnel employed by any Co-Collateral Agent, and (ii) the fees or charges paid or incurred by any Co-Collateral Agent (but, in any event, no less than a charge of \$1,000 per day, per Person, plus out-of-pocket expenses

(including travel, meals, and lodging)) if it elects to employ the services of one or more third Persons to perform field examinations of Parent or its Subsidiaries, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, to perform financial audits or quality of earnings analyses of Borrowers or their Subsidiaries, or to assess Parent's or its Subsidiaries' business valuation.

(d) **Closing Fee.** Borrowers shall pay to Agent, for the ratable account of the Lenders, as and when due and payable under the terms of the Fee Letter, the closing fee set forth in the Fee Letter. In addition, Borrowers shall pay to Agent, for the ratable benefit of the Revolving Lenders, an incremental facility fee of \$500,000 fully earned upon the date hereof and payable hereunder upon the reduction of the Revolver Commitments substantially to zero or the early termination of the Revolver Commitments; provided, that, such fee shall be waived if the Existing Secured Obligations and the Obligations are paid in full with the proceeds of any sale of all or substantially all of the Loan Parties' assets pursuant to Section 363 of the Bankruptcy Code. For the avoidance of doubt, such fee shall not be waived if the Existing Secured Obligations and the Obligations are paid in full with proceeds from any other source, whether during the Bankruptcy Cases or under a plan of reorganization.

## 2.11. **Letters of Credit.**

(a) Subject to the terms and conditions of this Agreement, upon the request of Administrative Borrower made in accordance herewith, Issuing Lender agrees to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue, a requested Letter of Credit for the account of Borrowers. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among other means, by becoming an applicant with respect to such Letter of Credit or entering into undertakings or other arrangements that provide for reimbursement of such Underlying Issuer with respect to such drawings under Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking") with respect to Letters of Credit issued by such Underlying Issuer for the account of Borrowers. By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrowers shall be deemed to have requested that (i) Issuing Lender issue or (ii) an Underlying Issuer issue the requested Letter of Credit (and, in such case, to have requested Issuing Lender to issue a Reimbursement Undertaking with respect to such requested Letter of Credit). Each Borrower acknowledges and agrees that such Borrower is and shall be deemed to be an applicant (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Letter of Credit. Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by an Authorized Person and delivered to Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to Issuing Lender and (i) shall specify (A) the amount of such Letter of Credit, (B) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (C) the proposed expiration date of such Letter of Credit, (D) the name and address of the beneficiary of the Letter of Credit, and (E) such other information (including, the conditions to drawing, and, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall

be necessary to prepare, amend, renew, or extend such Letter of Credit, and (ii) shall be accompanied by such Issuer Documents as Agent, Issuing Lender or Underlying Issuer may request or require, to the extent that such requests or requirements are consistent with the Issuer Documents that Issuing Lender or Underlying Issuer generally requests for Letters of Credit in similar circumstances. Anything contained herein to the contrary notwithstanding, Issuing Lender may, but shall not be obligated to, issue or cause the issuance of a Letter of Credit or to issue a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, that supports the obligations of Parent or its Subsidiaries in respect of (A) a lease of real property to the extent that the face amount of such Letter of Credit or the amount of such Reimbursement Undertaking exceeds the highest rent (including all rent-like charges) payable under such lease for a period of one year, or (B) an employment contract to the extent that the face amount of such Letter of Credit or the amount of such Reimbursement Undertaking exceeds the highest compensation payable under such contract for a period of one year.

(b) Issuing Lender shall have no obligation to issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed \$15,000,000, or

(ii) the Letter of Credit Usage would exceed the Maximum Revolver Amount less the Availability Reserve less the outstanding amount of Revolving Loans (including Swing Loans), or

(iii) the Letter of Credit Usage would exceed the Borrowing Base at such time less the outstanding principal balance of the Revolving Loans (inclusive of Swing Loans) at such time.

(c) In the event there is a Defaulting Lender as of the date of any request for the issuance of a Letter of Credit, the Issuing Lender shall not be required to issue or arrange for such Letter of Credit to the extent (x) the Defaulting Lender's Letter of Credit Exposure with respect to such Letter of Credit may not be reallocated pursuant to Section 2.3(g)(ii) or (y) the Issuing Lender has not otherwise entered into arrangements reasonably satisfactory to it and Borrowers to eliminate the Issuing Lender's risk with respect to the participation in such Letter of Credit of the Defaulting Lender, which arrangements may include Borrowers cash collateralizing such Defaulting Lender's Letter of Credit Exposure in accordance with Section 2.3(g)(ii). Additionally, Issuing Lender shall have no obligation to issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, if (I) any order, judgment, or decree of any Governmental Authority or arbitrator shall, by its terms, purport to enjoin or restrain Issuing Lender from issuing such Letter of Credit or Reimbursement Undertaking or Underlying Issuer from issuing such Letter of Credit, or any law applicable to Issuing Lender or Underlying Issuer or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over Issuing Lender or Underlying Issuer shall prohibit or request that Issuing Lender or Underlying Issuer refrain from the issuance of letters of credit generally or such Letter of Credit or Reimbursement Undertaking (as applicable) in particular, or (II) the issuance of such Letter of Credit would

violate one or more policies of Issuing Lender or Underlying Issuer applicable to letters of credit generally.

(d) Any Issuing Lender (other than Wells Fargo or any of its Affiliates) shall notify Agent in writing no later than the Business Day immediately following the Business Day on which such Issuing Lender issued any Letter of Credit; provided that (y) until Agent advises any such Issuing Lender that the provisions of Section 3.2 are not satisfied, or (z) the aggregate amount of the Letters of Credit issued in any such week exceeds such amount as shall be agreed by Agent and such Issuing Lender, such Issuing Lender shall be required to so notify Agent in writing only once each week of the Letters of Credit issued by such Issuing Lender during the immediately preceding week as well as the daily amounts outstanding for the prior week, such notice to be furnished on such day of the week as Agent and such Issuing Lender may agree. Each Letter of Credit shall be in form and substance reasonably acceptable to Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Letter of Credit or an Underlying Issuer makes a payment under an Underlying Letter of Credit, Borrowers shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the date such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be a Revolving Loan hereunder (notwithstanding any failure to satisfy any condition precedent set forth in Section 3) and, initially, shall bear interest at the rate then applicable to Revolving Loans that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be a Revolving Loan hereunder, Borrowers' obligation to pay the amount of such Letter of Credit Disbursement to Issuing Lender shall be automatically converted into an obligation to pay the resulting Revolving Loan. Promptly following receipt by Agent of any payment from Borrowers pursuant to this paragraph, Agent shall distribute such payment to Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.11(b) to reimburse Issuing Lender, then to such Lenders and Issuing Lender as their interests may appear.

(e) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(a), each Revolving Lender agrees to fund its Pro Rata Share of any Revolving Loan deemed made pursuant to Section 2.11(a) on the same terms and conditions as if Borrowers had requested the amount thereof as a Revolving Loan and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit or a Reimbursement Undertaking (or an amendment, renewal, or extension of a Letter of Credit or a Reimbursement Undertaking) and without any further action on the part of Issuing Lender or the Revolving Lenders, Issuing Lender shall be deemed to have granted to each Revolving Lender, and each Revolving Lender shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Lender and each Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Letter of Credit or Reimbursement Undertaking, and each such Lender agrees to pay to Agent, for the account of Issuing Lender, such Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Revolving Lender hereby absolutely and unconditionally agrees to pay to Agent, for the account of Issuing Lender, such Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Borrowers on the date due as provided in Section 2.11(a), or of any reimbursement payment this is required

to be refunded (or that Agent or Issuing Lender elects, based upon the advice of counsel, to refund) to Borrowers for any reason. Each Revolving Lender acknowledges and agrees that its obligation to deliver to Agent, for the account of Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(b) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(f) Borrowers hereby agree to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, expense, or liability (other than Taxes, which shall be governed by Section 16), and reasonable and documented attorneys' fees and expenses incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Reimbursement Undertaking or any Letter of Credit; provided, that Borrowers shall not be obligated hereunder to indemnify the Lender Group or any Underlying Issuer for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Borrowers agree to be bound by the Underlying Issuer's regulations and interpretations of any Letter of Credit or by Issuing Lender's interpretations of any Reimbursement Undertaking even though this interpretation may be different from any Borrower's own. Borrowers understand that the Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by Borrowers against such Underlying Issuer. Borrowers hereby agree to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, expense (including reasonable and documented attorneys' fees and expenses), or liability (other than Taxes, which shall be governed by Section 16) incurred by them as a result of Issuing Lender's indemnification of an Underlying Issuer; provided, that Borrowers shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of Issuing Lender or any other member of the Lender Group.

(g) Each Lender and Borrowers agree that, in paying any drawing under a Letter of Credit, neither Issuing Lender nor any Underlying Issuer (as applicable) shall have any responsibility to obtain any document (other than any sight draft, certificates and documents expressly required by the Letter of Credit or the Underlying Letter of Credit (as applicable)) or to ascertain or inquire as to the validity or accuracy of any such document or the authority of the Person executing or delivering any such document. None of Issuing Lender, any Underlying Issuer, Agent, any of the Lender-Related Persons or Agent-Related Persons, nor any correspondent, participant or assignee of Issuing Lender shall be liable to any Lender or any Loan Party for (i) any action taken or omitted in connection herewith at the request or with the approval of the Lenders or the Required Lenders, as applicable; (ii) any action taken or omitted in the absence of gross negligence or willful misconduct; (iii) any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or



relating to any Letter of Credit or any error in interpretation of technical terms; or (iv) the due execution, effectiveness, validity or enforceability of any document or instrument related to any Letter of Credit or Issuer Document. Each Borrower hereby assumes all risks of the acts or omissions of any beneficiary or transferee with respect to its use of any Letter of Credit; provided, that this assumption is not intended to, and shall not, preclude Borrowers from pursuing such rights and remedies as it may have against the beneficiary or transferee at law or under any other agreement. None of Issuing Lender, any Underlying Issuer, Agent, any of the Lender-Related Persons or Agent-Related Persons, nor any correspondent, participant or assignee of Issuing Lender or any Underlying Issuer shall be liable or responsible for any of the matters described in clauses (i) through (vi) of Section 2.11(h) or for any action, neglect or omission under or in connection with any Letter of Credit or Issuer Document, including in connection with the issuance or any amendment of any Letter of Credit, the failure to issue or amend any Letter of Credit, the honoring or dishonoring of any demand under any Letter of Credit, or the following of any Borrower's instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto, and such action or neglect or omission will bind Borrowers. In furtherance and not in limitation of the foregoing, Issuing Lender and each Underlying Issuer may accept documents that appear on their face to be in order, without responsibility for further investigation, regardless of any notice or information to the contrary (or Issuing Lender and any Underlying Issuer may refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit and may disregard any requirement in a Letter of Credit that notice of dishonor be given in a particular manner and any requirement that presentation be made at a particular place or by a particular time of day), and neither Issuing Lender nor any Underlying Issuer shall be responsible for the validity or sufficiency of any instrument transferring or assigning or purporting to transfer or assign a Letter of Credit or the rights or benefits thereunder or proceeds thereof, in whole or in part, which may prove to be invalid or ineffective for any reason. Neither Issuing Lender nor any Underlying Issuer shall be responsible for the wording of any Letter of Credit (including any drawing conditions or any terms or conditions that are ineffective, ambiguous, inconsistent, unduly complicated or reasonably impossible to satisfy), notwithstanding any assistance Issuing Lender or any Underlying Issuer may provide to Borrowers with drafting or recommending text for any letter of credit application or with the structuring of any transaction related to any Letter of Credit, and Borrowers hereby acknowledge and agree that any such assistance will not constitute legal or other advice by Issuing Lender or any Underlying Issuer or any representation or warranty by Issuing Lender or any Underlying Issuer that any such wording or such Letter of Credit will be effective. Without limiting the foregoing, Issuing Lender or any Underlying Issuer may, as it deems appropriate, use in any Letter of Credit any portion of the language prepared by any Borrower and contained in the letter of credit application relative to drawings under such Letter of Credit. Borrowers hereby acknowledge and agree that neither any Underlying Issuer nor any member of the Lender Group shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

(h) The obligation of Borrowers to reimburse Issuing Lender for each drawing under each Letter of Credit shall be absolute, unconditional and irrevocable, and shall be paid strictly in accordance with the terms of this Agreement under all circumstances, including the following:

(i) any lack of validity or enforceability of such Letter of Credit, this Agreement, or any other Loan Document,

(ii) the existence of any claim, counterclaim, setoff, defense or other right that Parent or any of its Subsidiaries may have at any time against any beneficiary or any transferee of such Letter of Credit (or any Person for whom any such beneficiary or any such transferee may be acting), Issuing Lender or any other Person, whether in connection with this Agreement, the transactions contemplated hereby or by such Letter of Credit or any agreement or instrument relating thereto, or any unrelated transaction,

(iii) any draft, demand, certificate or other document presented under such Letter of Credit proving to be forged, fraudulent, invalid or insufficient in any respect or any statement therein being untrue or inaccurate in any respect, or any loss or delay in the transmission or otherwise of any document required in order to make a drawing under such Letter of Credit,

(iv) any payment by Issuing Lender under such Letter of Credit against presentation of a draft or certificate that does not substantially or strictly comply with the terms of such Letter of Credit (including, without limitation, any requirement that presentation be made at a particular place or by a particular time of day), or any payment made by Issuing Lender under such Letter of Credit to any Person purporting to be a trustee in bankruptcy, debtor-in-possession, assignee for the benefit of creditors, liquidator, receiver or other representative of or successor to any beneficiary or any transferee of such Letter of Credit,

(v) any other circumstance or happening whatsoever, whether or not similar to any of the foregoing, including any other circumstance that might otherwise constitute a defense available to, or discharge of, Parent or any of its Subsidiaries, or

(vi) the fact that any Default or Event of Default shall have occurred and be continuing.

(i) Borrowers hereby authorize and direct any Underlying Issuer to deliver to Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(j) Borrowers acknowledge and agree that any and all fees, charges, costs, or commissions in effect from time to time, of Issuing Lender relating to Letters of Credit or incurred by Issuing Lender relating to Underlying Letters of Credit, upon the issuance of any Letter of Credit, upon the payment or negotiation of any drawing under any Letter of Credit, or upon the occurrence of any other activity with respect to any Letter of Credit (including the transfer, amendment, or cancellation of any Letter of Credit), together with any and all fronting fees in effect from time to time related to Letters of Credit, shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable immediately by Borrowers to Agent for the account of Issuing Lender; it being acknowledged and agreed by Borrowers that, as of the Closing Date, Issuing Lender is entitled to charge Borrowers a fronting fee of 0.25% per annum

times the undrawn amount of each Underlying Letter of Credit and that such fronting fee may be changed by Issuing Lender from time to time without notice.

(k) If by reason of (i) any change after the Closing Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Board of Governors as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or

(ii) there shall be imposed on Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Letter of Credit or Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, participating in, or maintaining any Reimbursement Undertaking or Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Administrative Borrower, and Borrowers shall pay on demand, such amounts as Agent may specify to be necessary to compensate Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder. The determination by Agent of any amount due pursuant to this Section 2.11(k), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(l) Unless otherwise expressly agreed by Issuing Lender and Borrowers when a Letter of Credit is issued, (i) the rules of the ISP and the UCP 600 shall apply to each standby Letter of Credit, and (ii) the rules of the UCP 600 shall apply to each commercial Letter of Credit.

(m) In the event of a direct conflict between the provisions of this Section 2.11 and any provision contained in any Issuer Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.11 shall control and govern.

(n) Schedule 2.11 hereto contains a list of all letters of credit outstanding on the Filing Date pursuant to the Existing Loan Agreement. For the period from and after the effective date of the Interim Order, each such letter of credit set forth on Schedule 2.11,

including any extension or renewal thereof, that remains outstanding on the effective date of the Interim Order (each, as amended from time to time in accordance with the terms thereof and hereof, an "Existing Letter of Credit") shall be deemed Letters of Credit re-issued hereunder for the account of Borrowers, for all purposes of this Agreement, including, without limitation, calculations of Availability, the Borrowing Base, Letter of Credit Usage and all other fees and expenses relating to the Letters of Credit (including any related indemnification obligations). Issuing Lender hereby assumes and agrees to perform any and all duties, obligations and liabilities to be performed or discharged by the issuers of the Existing Letters of Credit. Borrowers agree to execute and deliver such documentation, if any, requested by Agent, or an Issuing Lender to evidence, record, or further the foregoing deemed re-issuance.

(o) The expiration date of each Letter of Credit, other than the Existing Letters of Credit, shall be on a date that is not later than fifteen (15) days prior to the Maturity Date unless Borrower provides cash collateral for the obligations and Reimbursement Undertakings associated with such Letters of Credit in the manner set forth in Section 2.4(f) hereof; provided, that a Letter of Credit may provide for automatic extensions of its expiration date for one (1) or more successive periods of up to twelve (12) months for each period; provided, further, that the applicable Issuing Lender has the right to terminate such Letter of Credit on each such expiration date and no renewal term may extend the term of the Letter of Credit to a date that is later than the fifteenth (15th) day prior to the Maturity Date unless Borrowers provide cash collateral for the obligations and Reimbursement Undertakings associated with such Letters of Credit in the amount set forth in Section 2.4(f). Upon direction by Agent or Required Lenders, the applicable Issuing Lender shall not renew any such Letter of Credit at any time during the continuance of an Event of Default; provided, that in the case of a direction by Agent or Required Lenders, the Issuing Lender receives such directions prior to the date notice of non-renewal is required to be given by the Issuing Lender and the Issuing Lender has had a reasonable period of time to act on such notice.

## 2.12. LIBOR Option.

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrowers shall have the option, subject to Section 2.12(b) below (the "LIBOR Option") to have interest on all or a portion of the Revolving Loans be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; provided, that, subject to the following clauses (ii) and (iii), in the case of any Interest Period greater than 3 months in duration, interest shall be payable at 3 month intervals after the commencement of the applicable Interest Period and on the last day of such Interest Period), (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrowers properly have exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At any time that an Event of Default has occurred and is continuing, at the

written election of the Required Lenders, Borrowers no longer shall have the option to request that Revolving Loans bear interest at a rate based upon the LIBOR Rate.

(b) **LIBOR Election.**

(i) Borrowers may, at any time and from time to time, so long as Administrative Borrower has not received a notice from Agent (which notice Agent may elect to give or not give in its discretion unless Agent is directed to give such notice by the Required Lenders, in which case, it shall give the notice to Administrative Borrower), after the occurrence and during the continuance of an Event of Default, to terminate the right of Borrowers to exercise the LIBOR Option during the continuance of such Event of Default, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrowers' election of the LIBOR Option for a permitted portion of the Revolving Loans and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. on the same day). Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrowers. In connection with each LIBOR Rate Loan, Borrowers shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Administrative Borrower setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrowers shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Agent may, in its sole discretion at the request of Administrative Borrower, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the application of payments to any LIBOR Rate Loan and that, in the event that Agent does not defer such application, Borrowers shall be obligated to pay any resulting Funding Losses.

(iii) Unless Agent, in its sole discretion, agrees otherwise, Borrowers shall have not more than 5 LIBOR Rate Loans in effect at any given time. Borrowers only may exercise the LIBOR Option for proposed LIBOR Rate Loans of at least \$1,000,000.

(c) **Conversion.** Borrowers may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, that in the event that LIBOR Rate Loans are converted or prepaid

on any date that is not the last day of the Interest Period applicable thereto, including as a result of any prepayment through the required application by Agent of any payments or proceeds of Collateral in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrowers shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

**(d) Special Provisions Applicable to LIBOR Rate.**

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law (other than changes in laws relative to Taxes, which shall be governed by Section 16) occurring subsequent to the commencement of the then applicable Interest Period, including changes in tax laws (except changes of general applicability in corporate income tax laws) and changes in the reserve requirements imposed by the Board of Governors, which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Administrative Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrowers may, by notice to such affected Lender (A) require such Lender to furnish to Borrowers a statement setting forth in reasonable detail the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (B) repay the LIBOR Rate Loans of such Lender with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Administrative Borrower and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans, and (z) Borrowers shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

**(e) No Requirement of Matched Funding.** Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

2.13. **Capital Requirements.**

(a) If, after the date hereof, any Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change in the interpretation, implementation, or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such 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), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's 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 such Lender to be material, then such Lender may notify Administrative Borrower and Agent thereof. Following receipt of such notice, Borrowers agree to pay such Lender on demand the amount of such reduction of return of capital as and when such reduction is determined, payable within 30 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrowers shall not be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies Administrative Borrower of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the 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.

(b) If any Lender requests additional or increased costs referred to in Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (any such Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.12(d)(i) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrowers agree to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrowers' obligation to pay any future amounts to such Affected Lender pursuant to Section 2.12(d)(i) or Section 2.13(a), as applicable, or to enable Borrowers to obtain LIBOR Rate Loans, then Borrowers (without prejudice to any amounts then due to such Affected Lender

under Section 2.12(d)(i) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.12(d)(i) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, may seek a substitute Lender reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's Commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and Commitments, pursuant to an Assignment and Acceptance Agreement, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be a "Lender" for purposes of this Agreement and such Affected Lender shall cease to be a "Lender" for purposes of this Agreement.

(c) Notwithstanding anything herein to the contrary, (i) the issuance of any rules, regulations or directions under the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines or directives thereunder or issued in connection therewith and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlement, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States regulatory authorities, in each case pursuant to Basel III, with respect to clauses (i) and (ii) above, after the date of this Agreement shall be deemed to be a change in law, rule, regulation or guideline for purposes of Sections 2.12 and 2.13 and the protection of Sections 2.12 and 2.13 shall be available to each Lender and Issuing Lender regardless of any possible contention of the invalidity or inapplicability of the law, rule, regulation, guideline or other change or condition which shall have occurred or been imposed, so long as it shall be customary for lenders or issuing banks affected thereby to comply therewith. Notwithstanding any other provision herein, no Lender or Issuing Lender shall demand compensation pursuant to this Section 2.13 if it shall not at the time be the general policy or practice of such Lender or Issuing Lender (as the case may be) to demand such compensation in similar circumstances under comparable provisions of other credit agreements, if any.

2.14. **Joint and Several Liability of Borrowers.**

(a) Each Borrower is accepting joint and several liability hereunder and under the other Loan Documents in consideration of the financial accommodations to be provided by the Lender Group under this Agreement, for the mutual benefit, directly and indirectly, of each Borrower and in consideration of the undertakings of the other Borrowers to accept joint and several liability for the Obligations.

(b) Each Borrower, jointly and severally, hereby irrevocably and unconditionally accepts, not merely as a surety but also as a co-debtor, joint and several liability with the other Borrowers, with respect to the payment and performance of all of the Obligations (including any Obligations arising under this Section 2.14), it being the intention of the parties hereto that all the Obligations shall be the joint and several obligations of each Borrower without preferences or distinction among them.

(c) If and to the extent that any Borrower shall fail to make any payment with respect to any of the Obligations as and when due or to perform any of the Obligations in



accordance with the terms thereof, then in each such event the other Borrowers will make such payment with respect to, or perform, such Obligation.

(d) The Obligations of each Borrower under the provisions of this Section 2.14 constitute the absolute and unconditional, full recourse Obligations of each Borrower enforceable against each Borrower to the full extent of its properties and assets, irrespective of the validity, regularity or enforceability of this Agreement or any other circumstances whatsoever.

(e) Except as otherwise expressly provided in this Agreement, each Borrower hereby waives notice of acceptance of its joint and several liability, notice of any Revolving Loans or Letters of Credit issued under or pursuant to this Agreement, notice of the occurrence of any Default, Event of Default, or of any demand for any payment under this Agreement, notice of any action at any time taken or omitted by Agent or Lenders under or in respect of any of the Obligations, any requirement of diligence or to mitigate damages and, generally, to the extent permitted by applicable law, all demands, notices and other formalities of every kind in connection with this Agreement (except as otherwise provided in this Agreement). Each Borrower hereby assents to, and waives notice of, any extension or postponement of the time for the payment of any of the Obligations, the acceptance of any payment of any of the Obligations, the acceptance of any partial payment thereon, any waiver, consent or other action or acquiescence by Agent or Lenders at any time or times in respect of any default by any Borrower in the performance or satisfaction of any term, covenant, condition or provision of this Agreement, any and all other indulgences whatsoever by Agent or Lenders in respect of any of the Obligations, and the taking, addition, substitution or release, in whole or in part, at any time or times, of any security for any of the Obligations or the addition, substitution or release, in whole or in part, of any Borrower. Without limiting the generality of the foregoing, each Borrower assents to any other action or delay in acting or failure to act on the part of any Agent or Lender with respect to the failure by any Borrower to comply with any of its respective Obligations, including any failure strictly or diligently to assert any right or to pursue any remedy or to comply fully with applicable laws or regulations thereunder, which might, but for the provisions of this Section 2.14 afford grounds for terminating, discharging or relieving any Borrower, in whole or in part, from any of its Obligations under this Section 2.14, it being the intention of each Borrower that, so long as any of the Obligations hereunder remain unsatisfied, the Obligations of each Borrower under this Section 2.14 shall not be discharged except by performance and then only to the extent of such performance. The Obligations of each Borrower under this Section 2.14 shall not be diminished or rendered unenforceable by any winding up, reorganization, arrangement, liquidation, reconstruction or similar proceeding with respect to any Borrower or any Agent or Lender.

(f) Each Borrower represents and warrants to Agent and Lenders that such Borrower is currently informed of the financial condition of Borrowers and of all other circumstances which a diligent inquiry would reveal and which bear upon the risk of nonpayment of the Obligations. Each Borrower further represents and warrants to Agent and Lenders that such Borrower has read and understands the terms and conditions of the Loan Documents. Each Borrower hereby covenants that such Borrower will continue to keep informed of Borrowers' financial condition, the financial condition of other guarantors, if any,

and of all other circumstances which bear upon the risk of nonpayment or nonperformance of the Obligations.

(g) Each Borrower waives all rights and defenses arising out of an election of remedies by Agent or any Lender, even though that election of remedies, such as a nonjudicial foreclosure with respect to security for a guaranteed obligation, has destroyed Agent's or such Lender's rights of subrogation and reimbursement against such Borrower by the operation of Section 580(d) of the California Code of Civil Procedure or any other similar laws or otherwise.

(h) The provisions of this Section 2.14 are made for the benefit of Agent, Lenders and their respective successors and assigns, and may be enforced by it or them from time to time against any or all Borrowers as often as occasion therefor may arise and without requirement on the part of Agent, Lender, successor or assign first to marshal any of its or their claims or to exercise any of its or their rights against any Borrower or to exhaust any remedies available to it or them against any Borrower or to resort to any other source or means of obtaining payment of any of the Obligations hereunder or to elect any other remedy. The provisions of this Section 2.14 shall remain in effect until all of the Obligations shall have been paid in full or otherwise fully satisfied. If at any time, any payment, or any part thereof, made in respect of any of the Obligations, is rescinded or must otherwise be restored or returned by Agent or any Lender upon the insolvency, bankruptcy or reorganization of any Borrower, or otherwise, the provisions of this Section 2.14 will forthwith be reinstated in effect, as though such payment had not been made.

(i) Each Borrower hereby agrees that it will not enforce any of its rights of contribution or subrogation against any other Loan Party with respect to any liability incurred by it hereunder or under any of the other Loan Documents, any payments made by it to Agent or Lenders with respect to any of the Obligations or any collateral security therefor until such time as all of the Obligations have been paid in full in cash. Any claim which any Borrower may have against any other Loan Party with respect to any payments to any Agent or Lender hereunder or under any other Loan Documents are hereby expressly made subordinate and junior in right of payment, without limitation as to any increases in the Obligations arising hereunder or thereunder, to the prior payment in full in cash of the Obligations and, in the event of any insolvency, bankruptcy, receivership, liquidation, reorganization or other similar proceeding under the laws of any jurisdiction relating to any Loan Party, its debts or its assets, whether voluntary or involuntary, all such Obligations shall be paid in full in cash before any payment or distribution of any character, whether in cash, securities or other property, shall be made to any other Loan Party therefor.

### 3. **CONDITIONS; TERM OF AGREEMENT.**

3.1. **Conditions Precedent to the Initial Extension of Credit.** The obligation of each Lender to make the initial extensions of credit provided for hereunder is subject to the fulfillment, to the satisfaction of Agent, each Co-Collateral Agent and each Lender, of each of the conditions precedent set forth on Schedule 3.1 (the making of such initial extensions of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent ).

3.2. **Conditions Precedent to all Extensions of Credit.** The obligation of the Lender Group (or any member thereof) to make any Revolving Loans hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

(a) the representations and warranties of Parent or 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 be true and correct in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof) as of such earlier date);

(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;

(c) no injunction, writ, restraining order, or other order of any nature restricting or prohibiting, directly or indirectly, the extending of such credit shall have been issued and remain in force by any Governmental Authority against any Borrower, Agent, or any Lender; and

(d) no Material Adverse Change shall have occurred since the Closing Date.

No member of the Lender Group shall make any Revolving Loans under Section 2.1 hereof without the consent of all Lenders at any time that an Event of Default under Section 8.6(a) hereof that arises on account of the occurrence of a Split Lien Termination Date shall have occurred and be continuing, an Event of Default arising as a result of a breach of Section 5.16 hereof shall have occurred and be continuing or the lenders party to the Split Lien Credit Agreement are refusing to fund as a result of the existence of an "Event of Default" under and as defined in the Split Lien Credit Agreement.

3.3. **Maturity.** This Agreement shall continue in full force and effect for a term ending on the earlier of the Maturity Date or the Required Prepayment Date.

3.4. **Effect of Maturity.** On the earlier of the Maturity Date or the Required Prepayment Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without notice or demand and Borrowers shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrowers' sole expense, execute and deliver any termination statements, lien releases, discharges of

security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5. **Early Termination by Borrowers.** Borrowers have the option, at any time upon 5 Business Days prior written notice to Agent, to terminate this Agreement and terminate the Commitments hereunder by repaying to Agent all of the Obligations in full, including, without limitation the prepayment fee described in Section 2.10(d), as applicable. The foregoing notwithstanding, (a) Borrowers may rescind termination notices relative to proposed payments in full of the Obligations with the proceeds of third party Indebtedness if the closing for such issuance or incurrence does not happen on or before the date of the proposed termination (in which case, a new notice shall be required to be sent in connection with any subsequent termination), and (b) Borrowers may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

#### 4. **REPRESENTATIONS AND WARRANTIES.**

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

##### 4.1. **Due Organization and Qualification; Subsidiaries.**

(a) Each Loan Party (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 Effect, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) Set forth on Schedule 4.1(b) (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 description of the authorized Equity Interest of Parent, 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 4.1(b), there are no subscriptions, options,

warrants, or calls relating to any shares of Parent's Equity Interest, including any right of conversion or exchange under any outstanding security or other instrument. Parent is not subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of its Equity Interest or any security convertible into or exchangeable for any of its Equity Interest.

(c) Set forth on Schedule 4.1(c) (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 Parent's direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Equity Interests authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Parent. All of the outstanding Equity Interest of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(c), there are no subscriptions, options, warrants, or calls relating to any shares of Parent's or its Subsidiaries' Equity Interest, including any right of conversion or exchange under any outstanding security or other instrument.

#### 4.2. **Due Authorization; No Conflict.**

(a) Subject to the approval of the Bankruptcy Court pursuant to the Financing Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) Subject to the approval of the Bankruptcy Court pursuant to the Financing Order, as to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party 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 agreement of any Loan Party or its Subsidiaries, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any holder of Equity Interest of a Loan Party or any approval or consent of any Person under any material agreement of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect.

4.3. **Governmental Consents.** Subject to approval of the Bankruptcy Court pursuant to the Financing Order, the execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect.

4.4. **Binding Obligations; Perfected Liens.**

(a) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms.

(b) Subject to the approval of the Bankruptcy Court and pursuant to the Financing Order, Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title, (ii) money, (iii) letter-of-credit rights (other than supporting obligations, (iv) commercial tort claims (other than those that, by the terms of the Guaranty and Security Agreement, are required to be perfected), and (v) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 7(k)(iv) of the Security Agreement, and subject only to the filing of financing statements, and the recordation of the Mortgages, in each case, in the appropriate filing offices), and first priority Liens, subject as to priority only to Permitted Senior Liens.

4.5. **Title to Assets; No Encumbrances.** Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

4.6. **Litigation.**

(a) Other than the filing, commencement and continuation of the Bankruptcy Cases and any litigation resulting therefrom, there are no actions, suits, or proceedings pending or, to the knowledge of Borrowers, 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 Effect.

(b) Schedule 4.6(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, \$100,000 that, as of the Closing Date, is pending or, to the knowledge of Borrowers, after due inquiry, threatened against a Loan Party or any of its Subsidiaries, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the procedural status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of the Loan Parties' and their Subsidiaries in connection with such actions, suits, or proceedings is covered by insurance.

4.7. **Compliance with Laws.** Except as otherwise permitted by the Bankruptcy Code or pursuant to any order of the Bankruptcy Court, which order shall be in form and substance acceptable to the Agent, 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 Effect, or (b) is subject to or in default with respect to any final judgments, writs, injunctions, decrees, rules or regulations of any court or any federal, state, municipal or other governmental department, commission, board, bureau, agency or instrumentality, domestic or foreign, that, individually or in the aggregate, could reasonably be expected to result in a Material Adverse Effect.

4.8. **No Material Adverse Effect.** All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by Borrowers to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since December 29, 2012, other than the filing, commencement and continuation of the Bankruptcy Cases and the events that customarily result from the filing, commencement and continuation of the Bankruptcy Cases (including any litigation resulting therefrom), no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Effect with respect to the Loan Parties and their Subsidiaries.

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

4.10. **Employee Benefits.** No Loan Party, none of their Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Benefit Plan.

4.11. **Environmental Condition.** Except as set forth on Schedule 4.11, (a) to Borrowers' knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Borrowers' knowledge, after due inquiry, no Loan Party's nor any of its Subsidiaries' properties or assets has 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.

4.12. **Complete Disclosure.** All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrowers' industry) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent, any Co-Collateral Agent or any Lender (including all

information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, 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 Borrowers' industry) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent, any Collateral Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projected Information delivered to Agent and Co-Collateral Agents, on January 27, 2013, represent, and as of the date on which any other Projections are delivered to Agent and Co-Collateral Agents, such additional Projections represent, Borrowers' good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrowers to be reasonable at the time of the delivery thereof to Agent and Co-Collateral Agents (it being understood that such Projections are subject to significant uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, and no assurances can be given that such Projections will be realized, and although reflecting Borrowers' good faith estimate, projections or forecasts based on methods and assumptions which Borrowers believed to be reasonable at the time such Projections were prepared, are not to be viewed as facts, and that actual results during the period or periods covered by the Projections may differ materially from projected or estimated results).

4.13. **Patriot Act.** To the extent applicable, each Loan Party is in compliance, in all material respects, with the (a) Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism (USA Patriot Act of 2001) (the "Patriot Act"). No part of the proceeds of the loans made hereunder will be used by any Loan Party 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.

4.14. **Indebtedness.** Set forth on Schedule 4.14 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 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 date specified on such Schedule.

4.15. **Payment of Taxes.** Except to the extent subject to the automatic stay and as otherwise permitted under Section 5.5, all tax returns and reports of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable. Each Loan Party and



each of its Subsidiaries have made adequate provision in accordance with GAAP for all taxes not yet due and payable. Borrowers know of no proposed tax assessment against a 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 proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.16. **Margin Stock.** 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 Borrowers will be used to purchase or carry any Margin Stock or to extend credit to others for the purpose of purchasing or carrying any Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors.

4.17. **Governmental Regulation.** No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party 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.

4.18. **OFAC.** No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (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.

4.19. **Employee and Labor Matters.** There is (i) no unfair labor practice complaint pending or, to the knowledge of Borrowers, threatened against Parent or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against Parent or its Subsidiaries which arises out of or under any collective bargaining agreement and that could reasonably be expected to result in a material liability, (ii) no strike, labor dispute, slowdown, stoppage or similar action or grievance pending or threatened in writing against Parent or its Subsidiaries that could reasonably be expected to result in a material liability, or (iii) to the knowledge of Borrowers, after due inquiry, no union representation question existing with respect to the employees of Parent or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of Parent or its Subsidiaries. None of Parent or 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 Parent or 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 Effect. All material payments due from

Parent or 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 Parent.

4.20. **Intentionally Omitted.**

4.21. **Leases.** Each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them.

4.22. **Eligible Accounts.** As to each Account that is identified by Borrowers as an Eligible Account in a Borrowing Base Certificate submitted to Co-Collateral Agents, 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 the Borrowers' business, (b) owed to Borrowers without any known defenses, disputes, offsets, counterclaims, or rights of return or cancellation, and (c) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Co-Collateral Agents-discretionary criteria) set forth in the definition of Eligible Accounts.

4.23. **Eligible Inventory.** As to each item of Inventory that is identified by the Borrowers as Eligible Inventory in a Borrowing Base Certificate submitted to Co-Collateral Agents, such Inventory is (a) of good and merchantable quality, free from known defects, and (b) not excluded as ineligible by virtue of one or more of the excluding criteria (other than Co-Collateral Agents-discretionary criteria) set forth in the definition of Eligible Inventory.

4.24. **Location of Inventory.** The Inventory of Borrowers is not stored with a bailee, warehouseman, or similar party except to the extent permitted under Section 6.13 and is located only at, or in-transit between, the locations identified on Schedule 4.24 (as such Schedule may be updated pursuant to Section 5.14).

4.25. **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.

4.26. **Other Documents.** Borrowers have delivered to Agent a complete and correct copy of the Split Lien Documents, including all schedules and exhibits thereto. The execution, delivery and performance of each of the Split Lien Documents has been duly authorized by all necessary action on the part of Loan Parties.

4.27. **Matters Relating to Liens and Property Rights.** The entry of the Financing Order is effective to create in favor of Agent, for the benefit of Lenders, as security for the Obligations, (i) a valid first priority (other than with respect to the Permitted Priority Liens and the Carveout) Lien on all of the Collateral pursuant to Sections 364(c)(2), (c)(3) and (d) of the Bankruptcy Code and (ii) an allowed administrative expense in each of the Bankruptcy Cases having priority under Section 364(c)(1) of the Bankruptcy Code over all other administrative expenses (including, without limitation, such expenses specified in Sections 105, 326, 328, 330, 331, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726 and 1114 of the Bankruptcy Code), subject

only to the Permitted Priority Liens and the Carveout (the "Superpriority Claims"). Except for the Financing Order, no authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for either (x) the pledge or grant by Borrower or any of its Subsidiaries of the Liens purported to be created in favor of Agent pursuant to this Agreement or any of the Loan Documents or (y) the exercise by Agent of any rights or remedies in respect of any Collateral (whether specifically granted or created pursuant to this Agreement, any of the Loan Documents or created or provided for by applicable law), except as may be required in connection with the disposition of any pledged Collateral by laws generally affecting the offering and sale of securities.

4.28. **Budget.** The Budget was prepared by Borrowers' financial personnel and represents the good faith belief of such Persons at such time as to the probable course of Borrowers' business and financial affairs, over the periods shown therein, subject to the assumptions stated therein.

4.29. **Financing Order.** The Financing Order is in full force and effect, is not subject to a pending appeal or motion for leave to appeal or other proceeding to set aside such order and has not been reversed, modified, amended, stayed or vacated except, in the case of non-material modifications, with Agent's written consent and, in the case of other modifications, with each Lender's written consent.

## 5. **AFFIRMATIVE COVENANTS.**

Each Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations:

5.1. **Financial Statements, Reports, Certificates.** Borrowers (a) will deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein, (b) agree that no Subsidiary of a Loan Party will have a fiscal year different from that of Borrowers, (c) agree to maintain a system of accounting that enables Borrowers to produce financial statements in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and maintain records pertaining to the Collateral that contains information as from time to time that reasonably may be requested by Agent, and (d) agree that they will, and will cause each other Loan Party to, (i) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to their and their Subsidiaries' sales, and (ii) maintain their billing systems and practices substantially as in effect as of the Closing Date and shall only make material modifications thereto with notice to, and with the consent of, Agent.

5.2. **Reporting.** Borrowers (a) will deliver to Agent and Co-Collateral Agents (and if so requested by Agent, with copies for each Lender) each of the reports set forth on Schedule 5.2 at the times specified therein, and (b) agree to cooperate fully with Agent and Co-Collateral Agents 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.

5.3. **Existence.** Except as otherwise permitted under Section 6.4, Parent will, and will cause each of its Subsidiaries to, at all times preserve and keep in full force and effect such Person's valid existence and good standing in its jurisdiction of organization and, except as could not reasonably be expected to result in a Material Adverse Effect, good standing with respect to all other jurisdictions in which it is qualified to do business and any rights, franchises, permits, licenses, accreditations, authorizations, or other approvals material to their businesses.

5.4. **Maintenance of Properties.** Parent will, and will cause each of its Subsidiaries to, maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, casualty, and condemnation excepted.

5.5. **Taxes.** Parent will, and will cause each of its Subsidiaries to, pay in full before delinquency or before the expiration of any extension period (including any extension by virtue of the Bankruptcy Cases) all material governmental assessments and taxes with respect to periods after the Filing Date whether real, personal or otherwise, due and payable by, or imposed, levied, or assessed against it, or any of its assets, except to the extent that the validity of such governmental assessment or tax is the subject of a Permitted Protest.

5.6. **Insurance.** Parent will, and will cause each of its Subsidiaries to, at Borrowers' expense, (a) maintain insurance respecting each of Parent's and its Subsidiaries' assets wherever located, covering liabilities, losses or damages as are customarily insured against by other Persons engaged in same or similar businesses and similarly situated and located. All such policies of insurance shall be with financially sound and reputable insurance companies acceptable to Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and, in any event, in amount, adequacy, and scope reasonably satisfactory to Agent (it being agreed that the amount, adequacy, and scope of the policies of insurance of Borrowers in effect as of the Closing Date are acceptable to Agent). All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard non-contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If Parent or its Subsidiaries fail to maintain such insurance, Agent may arrange for such insurance, but at Borrowers' expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Administrative Borrower shall give Agent prompt notice of any loss exceeding \$250,000 covered by its or its Subsidiaries' property or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property 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.

5.7. **Inspection.**

(a) Parent will, and will cause each of its Subsidiaries to, permit Agent, any Co-Collateral Agent, any Lender, and each of their respective duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees (provided an authorized representative of Administrative Borrower shall be allowed to be present) at such reasonable times and intervals as Agent, any Co-Collateral Agent or any Lender, as applicable, may designate and, so long as no Default or Event of Default has occurred and is continuing, with reasonable prior notice to Administrative Borrower and during regular business hours.

(b) Parent will, and will cause each of its Subsidiaries to, permit Agent or Co-Collateral Agents and each of its duly authorized representatives or agents to conduct appraisals and valuations at such reasonable times and intervals and in such manner as Agent or Co-Collateral Agents may designate.

5.8. **Compliance with Laws.** Parent will, and will cause each of its Subsidiaries to, comply with the requirements of all applicable laws, rules, regulations, and orders of any Governmental Authority, other than laws, rules, regulations, and orders the non-compliance with which, individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Effect.

5.9. **Environmental.** Parent will, and will cause each of its Subsidiaries to,

(a) Keep any property either owned or operated by Parent or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens,

(b) Comply, in all material respects, with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests,

(c) Promptly notify Agent of any release of which any Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Parent or 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, and

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

5.10. **Disclosure Updates.** Borrowers will, promptly and in no event later than 5 Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent, any Co-Collateral Agent or the Lenders 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. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **Intentionally omitted.**

5.12. **Further Assurances.** Parent will, and will cause each of the other Loan Parties to, at any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in the assets of Parent and its Subsidiaries (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), to create and perfect Liens in favor of Agent in any Real Property acquired (x) in fee by any Loan Party with a fair market value in excess of \$200,000 or (y) by lease, with respect to which the gross rental payments are in excess of \$100,000 annually and for which the term of the leasehold (after giving effect to any renewals and extensions at the option of Loan Parties) is two years or longer, 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 Subsidiary of Parent 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 determined by Agent in consultation with Administrative Borrower) in relation to the benefits to Agent and the Lenders of the security 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 following the request to do so, each Loan Party hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's name and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance of, and not in limitation of, the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guaranteed by the Guarantors and are secured by substantially all of the assets of Parent and its Subsidiaries, including all of the outstanding capital Equity Interests of Borrowers and Borrowers' Subsidiaries (subject to exceptions and limitations contained in the Loan Documents with respect to CFCs).

5.13. **Chief Restructuring Officer.** Borrowers will continue to appoint, retain and engage the Chief Restructuring Officer on terms and conditions acceptable to the Agent, which will include, without limitation, assisting Borrowers in the management of their businesses, preparation of forecasts and projections, and the formulation and implementation of strategic initiatives in connection with the Bankruptcy Cases. Borrowers hereby and will continue to authorize and instruct the chief restructuring officer to (a) share with the Agent and Lenders all budgets, records, projections, financial information, reports and other information relating to the

Collateral, the financial condition, operations and the sale, marketing or reorganization process of the Borrowers' businesses and assets as requested from time to time, except to the extent access to such information would compromise the Borrowers' attorney-client privilege and (b) make himself available to Agent, the Co-Collateral Agents and the Lenders as reasonably requested by the Agent, the Co-Collateral Agents and the Lenders. Borrowers will provide the chief restructuring officer, complete access to all of the Borrowers' books and records, all of Borrowers' premises and to Borrowers' management as and when deemed necessary by the chief restructuring officer or the Agent.

5.14. **Location of Inventory.** Parent will, and will cause each of its Subsidiaries to, keep its Inventory only at the locations identified on Schedule 4.24 and their chief executive offices only at the locations identified on Schedule 4.24 as its chief executive office; provided, that Borrowers may amend Schedule 4.24 so long as such amendment occurs by written notice to Agents not less than 10 days prior to the date on which such Inventory is moved to such new location or such chief executive office is relocated and so long as such new location is within the continental United States.

5.15. **Guarantor Reports.** Parent will, and will cause each of its Subsidiaries to, cause each Guarantor to deliver its annual financial statements at the time when Borrowers provide their financial statements to Agent, but only to the extent such Guarantor's financial statements are not consolidated with Borrowers' financial statements.

5.16. **Bankruptcy Transaction Milestones.** Parent will, and will cause each of its Subsidiaries to, cause the performance and delivery of the items set forth on Schedule 5.16 on or before the dates specified therein with respect to such items (the "Milestones").

## 6. **NEGATIVE COVENANTS.**

Each Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations:

6.1. **Indebtedness.** Parent will not, and will not permit any of its Subsidiaries to 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. Parent will not, and will not permit any of its Subsidiaries to be or remain liable with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee or similar obligations (whether or not drawn) except for Permitted Surety Bonds in an aggregate amount not in excess of \$30,000,000 at any time.

6.2. **Liens.** Parent will not, and will not permit any of its Subsidiaries to 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. Notwithstanding anything to the contrary in this Agreement or other Loan Documents, Parent will not, and will not permit any of its Subsidiaries to, create, incur, assume, or suffer to exist, directly or indirectly, any Lien with priority over the Liens created by the Loan Documents and Split Lien Loan Documents, except the Carveout.

6.3. **Restrictions on Fundamental Changes.** Parent will not, and will not permit any of its Subsidiaries to,

- (a) enter into any merger, consolidation, reorganization, or recapitalization, or reclassify its Equity Interests,
- (b) liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution),
- (c) suspend or cease operating a substantial portion of its or their business, or
- (d) form any new Subsidiary without Agent's prior written consent; provided, that, to the extent the Agent consents to the formation of any new Subsidiary, such new Subsidiary shall guaranty the Obligations and grant Liens on substantially all of its assets to secure the Obligations pursuant to documentation in form and substance acceptable to Agent.

6.4. **Disposal of Assets.** Other than Permitted Dispositions, Parent will not, and will not permit any of its Subsidiaries to convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any of its or their assets.

6.5. **Nature of Business.** Parent will not, and will not permit any of its Subsidiaries to make any change in the nature of its or their business as described in Schedule 6.5 or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, that the foregoing shall not prevent Parent and its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

6.6. **Prepayments and Amendments.** Parent will not, and will not permit any of its Subsidiaries to,

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1,

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of Parent or its Subsidiaries (including the Indebtedness under the Split Lien Documents), other than (A) the Obligations in accordance with this Agreement, and (B) Permitted Intercompany Advances, or

(ii) make any payment on account of Indebtedness that has been contractually subordinated in right of payment to the Obligations if such payment is not permitted at such time under the subordination terms and conditions applicable thereto, or

(b) 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 concerning Permitted Indebtedness other than (A) the Obligations in accordance with this Agreement, (B) the Split Lien Documents in accordance with the terms of the Split



Lien Intercreditor Agreement (as in effect on the date hereof), (C) Permitted Intercompany Advances, and (D) ordinary course amendments, modifications and changes to Indebtedness permitted under clauses (d), (f), and (i) of the definition of Permitted Indebtedness, or

(ii) 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 the Lenders.

6.7. **Restricted Payments.** Parent will not, and will not permit any of its Subsidiaries to make any Restricted Payment.

6.8. **Accounting Methods.** Parent will not, and will not permit any of its Subsidiaries to modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP) or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of Parent or its Subsidiaries' accounting records without said accounting firm or service bureau agreeing to provide Agent information regarding Parent's and its Subsidiaries' financial condition.

6.9. **Investments.** Parent will not, and will not permit any of its Subsidiaries to, directly or indirectly, make or acquire any Investment or incur any liabilities (including contingent obligations) for or in connection with any Investment except for Permitted Investments.

6.10. **Transactions with Affiliates.** Parent will not, and will not permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction with any Affiliate of Parent or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Parent or its Subsidiaries, on the one hand, and any Affiliate of Parent or its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, if they involve one or more payments by Parent or its Subsidiaries in excess of \$250,000 for any single transaction or series of related transactions, and (ii) are no less favorable, taken as a whole, to Parent or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate,

(b) so long as it has been approved by Parent's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any indemnity provided for the benefit of directors (or comparable managers) of Parent or its applicable Subsidiary,

(c) so long as it has been approved by Parent'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 Parent and its Subsidiaries in the ordinary course of business and consistent with industry practice.

Notwithstanding anything contained in this Agreement to the contrary, except for Permitted Intercompany Advances, no Loan Party shall enter into any transaction with, make any loan, advance or other Investment in, or otherwise transfer any property to any Subsidiary of Parent that is not a Loan Party.

6.11. **Use of Proceeds.** Parent will not, and will not permit any of its Subsidiaries to use the proceeds of any loan made hereunder for any purpose other than (a) on the Closing Date, (i) to pay the fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, the commencement of the Bankruptcy Cases and the transactions contemplated hereby and thereby, (ii) to fund working capital needs and general corporate purposes of Borrowers (including, without limitation, payments with respect to the Carveout and the Management Incentive Plan) and (iii) to provide payments of "adequate protection" (as set forth in Section 361 of the Bankruptcy Code) in favor of the Existing Lenders and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes (including that no part of the proceeds of the loans made to Borrowers will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such Margin Stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors), as permitted by, and consistent in all respects with, the Budget and the Financing Order, including, without limitation, to repay upon the entry of the Final Order, in full, the Existing Secured Obligations, including outstanding principal, accrued interest, and accrued fees and expenses owing under or in connection with the Existing Loan Agreement and other Existing Loan Documents.

Without limiting the generality of the foregoing, Parent will not, and will not permit any of its Subsidiaries to use the proceeds of any loan made hereunder or any proceeds of ABL Priority Collateral to be applied to (i) repay or prepay any of the Existing Split Lien Indebtedness or Split Lien Indebtedness (including any interest, fees, costs and expenses, tax or indemnification obligations), (ii) any Taxes incurred upon or as a result of the Disposition of Split Lien Priority Collateral or (iii) to affirmatively commence or support, or to pay any professional fees incurred to commence or support, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent enforceability or priority of the Liens, claims or rights in favor of Agent, any Lender, Existing Agent or any Existing Lender.

6.12. **Limitation on Issuance of Equity Interests.** Parent will not, and will not permit any of its Subsidiaries to issue or sell or enter into any agreement or arrangement for the issuance or sale of any of its Equity Interests.

6.13. **Inventory at Bailees.** Parent will not, and will not permit any of its Subsidiaries to store its Inventory at any time with a bailee, warehouseman, or similar party except to the extent the aggregate amount of such Inventory does not exceed \$38,000,000 during the period commencing on May 1st through September 30 of each year and does not exceed \$10,000,000 at any other time.

6.14. **Financing Order; Administrative Expense Priority; Payments.** Parent will not, and will not permit any of its Subsidiaries to:

(a) seek, consent to or suffer to exist at any time any modification, stay, vacation or amendment of the Financing Order, except for non-material modifications and amendments joined in or agreed to in writing by Agent or material modifications and amendments joined in or agreed to in writing by Agent and each Lender;

(b) seek the use of "Cash Collateral" (as defined in the Financing Order) in a manner inconsistent with the terms of the Financing Order without, in the case of non-material deviations, the prior written consent of Agent and, in all other cases, the consent of each Lender;

(c) suffer to exist at any time a priority for any administrative expense or unsecured claim against any Borrower (now existing or hereafter arising of any kind or nature whatsoever, including, without limitation, any administrative expenses of the kind specified in Sections 105, 326, 328, 365, 503(b), 506(c), 507(a), 507(b), 546(c), 726, 1113 and 1114 of the Bankruptcy Code) or any super priority claim which is equal or superior to the priority of the Lender Group in respect of the Obligations, except for the amounts having a priority over the Obligations to the extent set forth in the definition of Carveout;

(d) suffer to exist at any time any Lien on any properties, assets or rights (including, without limitation, Accounts, Inventory and all other Collateral) except for Permitted Priority Liens;

(e) prior to the date on which the Obligations have been indefeasibly paid in full in cash, all Letters of Credit have been cash collateralized or returned for cancellation pursuant to this Agreement, and this Agreement has been terminated, pay any administrative expenses, except administrative expenses incurred in the ordinary course of the business of Borrowers, in each case subject to the extent and having the order of priority set forth in the definition of Carveout; and

(f) notwithstanding the foregoing, the Borrowers shall be permitted to pay as the same may become due and payable (i) administrative expenses of the kind specified in Section 503(b) of the Bankruptcy Code incurred in the ordinary course of business and to the extent otherwise authorized under the Financing Order and this Agreement and (ii) compensation and reimbursement of expenses to professionals allowed and payable under Sections 330 and 331 of the Bankruptcy Code to the extent permitted by the Financing Order.

6.15. **Variance Test.** Parent will not permit, and will not permit any of its Subsidiaries to permit:

(a) (i) the aggregate amount of the actual receipts of the type set forth in the line item "Collections" on the accepted thirteen-week cash flow forecast under the Budget during any first fiscal week of any fiscal month of the Administrative Borrower (the first such fiscal week ending on February 2, 2013) (each, a "Single Test Week") to be less than 25% of the budgeted amount, or (ii) the average amount of such actual receipts in any rolling two fiscal week period of any fiscal month of the Administrative Borrower (for the avoidance of doubt, such rolling two fiscal week period ends on the end of the second, third, fourth and (if applicable) fifth fiscal week of each fiscal month) (each, a "Rolling Two Week Test Period") to be less than 20% of the average budgeted amounts for such period, in each case of (i) and (ii), set

forth in the line item "Collections" on the accepted thirteen-week cash flow forecast under the Budget;

(b) the average amount of the actual disbursements of the type set forth in the line item "Payroll" on the accepted thirteen-week cash flow forecast under the Budget in any Rolling Two Week Test Period to exceed 10% of the average of the budgeted amounts for such period set forth in the line item "Payroll" on the accepted thirteen-week cash flow forecast under the Budget;

(c) (i) the aggregate amount of the actual disbursements of the type set forth in any of the line items "Debtor Professional Fees", "Professional Fees for Unsecured Creditors", "AP Disbursement" and "Total Disbursements" on the accepted thirteen-week cash flow forecast under the Budget in any Single Test Week to exceed 15% of the budgeted amount, or (ii) the average amount of each type of such disbursements in any Rolling Two Week Test Period to exceed 10% of the average of the budgeted amounts for such period, in each case of (i) and (ii), set forth in the corresponding line item "Debtor Professional Fees", "Professional Fees for Unsecured Creditors", "AP Disbursement" and "Total Disbursements" on the accepted thirteen-week cash flow forecast under the Budget;

(d) (i) the sum of the aggregate amounts of the actual disbursements of the types set forth in line items "Debtor Professional Fees", "Professional Fees for Unsecured Creditors" and "Restructuring/Other Profess. Fees" on the accepted thirteen-week cash flow forecast under the Budget (the "Professional Fees Line Items") in any Single Test Week to exceed 15% of sum of the budgeted amounts, or (ii) the average amount of the sum of such types of disbursements in any Rolling Two Week Test Period to exceed 10% of the average of the sum of the budgeted amounts for such period, in each case of (i) and (ii), set forth in the Professional Fees Line Items on the accepted thirteen-week cash flow forecast under the Budget, or

(e) (i) the aggregate amount of the actual net cash flows of the type set forth in any of the line items "Net Cash Flows" on the accepted thirteen-week cash flow forecast under the Budget during any Single Test Week to be less than 15% of the budgeted amount, or (ii) the average amount of such type of net cash flows in any Rolling Two Week Test Period to be less than 15% of the average of the budgeted amounts for such period, in each case of (i) and (ii), set forth in the corresponding line item "Net Cash Flows" on the accepted thirteen-week cash flow forecast under the Budget.

7. **[INTENTIONALLY OMITTED]**

8. **EVENTS OF DEFAULT.**

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

8.1. **Payments.** If any Borrower fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of the Bankruptcy Cases), and such failure

continues for a period of 3 Business Days, (b) all or any portion of the principal of the Loans, (c) any amount payable to Issuing Lender in reimbursement of any drawing under a Letter of Credit, or (d) all or any portion of the Existing Secured Obligations as and when due and payable in accordance with the Financing Order.

8.2. **Covenants.** 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 5.1, 5.2, 5.3 (solely if a Loan Party is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if a Loan Party refuses to allow Agent or its representatives or agents to visit such Loan Party's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss such Loan Party's affairs, finances, and accounts with officers and employees of such Loan Party), 5.10, 5.13, 5.14, 5.15 or 5.16 of this Agreement, (ii) Sections 6 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 7 of the Guaranty and Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 5.4, 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent; 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 the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any officer of any Borrower or (ii) the date on which written notice thereof is given to Administrative Borrower by Agent.

8.3. **Judgments.** If, after the Filing Date, one or more judgments, orders, or awards for the payment of money involving an aggregate amount of \$200,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 30 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4. **Existing Loan Documents.** If there is an "Event of Default" under and as defined in the Existing Loan Documents first arising after the Filing Date other than any default (x) arising prior to the Filing Date, (y) due to Borrowers' filing, commencement and continuation of the Bankruptcy Cases and the events that customarily result from the filing, commencement and continuation of the Bankruptcy Cases (including any litigation resulting therefrom), or (z) due to restrictions on payments arising under the Bankruptcy Cases;

8.5. **Intentionally Omitted.**

8.6. **Default Under Other Agreements.** If, first arising after the Filing Date, there is (a) an "Event of Default" (as defined in the Split Lien Credit Agreement or the Existing Split Lien Credit Agreement), (b) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of \$200,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, or (c) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party involving an aggregate amount of \$200,000 or more, other than (x) any default arising prior to the Filing Date, (y) due to Borrowers' filing, commencement and continuation of the Bankruptcy Cases and any litigation arising therefrom, or (z) due to restrictions on payments arising as a result of the Bankruptcy Cases;

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

8.8. **Guaranty.** If the obligation of any Guarantor under any guaranty of the Obligations is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement);

8.9. **Security Documents.** If Guaranty and Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected and, except to the extent of Permitted Senior Liens, first priority Lien on the Collateral covered thereby, except (a) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, or (b) as the result of an action or failure to act on the part of Agent;

8.10. **Loan Documents.** The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document;

8.11. **Change in Control.** A Change in Control shall occur, whether directly or indirectly; or

8.12. **Bankruptcy Matters.**

(a) If Parent or any Subsidiary makes any payment on account of any Indebtedness existing as of the Filing Date, except for any payments expressly authorized by the Financing Order and this Agreement or any payments set forth in the Budget and expressly authorized pursuant to any other order of the Bankruptcy Court not objected to by Agent within two (2) Business Days after Agent has received written notification thereof from Administrative Borrower;

(b) If the Final Order is not entered within thirty (30) days (or such other period as Agent and Required Lenders may agree to in writing) following entry of the Interim Order; or any Financing Order is stayed, revised, revoked, remanded, rescinded, amended, reversed, vacated, or modified in any manner not acceptable to, in the case of non-material modifications or revisions, the Agent and, in all other cases, each Lender;

(c) If an order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court (i) appointing a trustee under Section 1104, or an examiner with enlarged powers relating to the operation of the business of the Loan Parties under Section 1106(b) of the Bankruptcy Code or (ii) terminating any Loan Party's exclusive rights to file and solicit acceptances for its plan;

(d) Subject to the entry of the Final Order, if any Person other than a Borrower in connection with the Agreement or the Existing Loan Agreement shall assert any claim in an aggregate amount in excess of \$50,000 in the any of the Bankruptcy Cases arising under Section 506(c) of the Bankruptcy Code against Agent, any Lender or the Collateral, and either (i) the same shall remain unopposed by the Borrower for more than 5 Business Days, or (ii) in any event, any such claim shall not be disallowed, dismissed or withdrawn, with prejudice, within 60 days after the assertion thereof;

(e) If any order is entered by the Bankruptcy Court sustaining any objection to the Existing Secured Obligations or any Existing Loan Document;

(f) If (i) any Borrower or any of its Subsidiaries shall attempt to invalidate, reduce or otherwise impair the Liens or security interests of Agent and the Lenders, claims or rights against Borrower or any of its Subsidiaries or to subject any Collateral to assessment pursuant to Section 506(c) of the Bankruptcy Code, (ii) any Lien or security interest created by this Agreement or the Financing Order shall, for any reason, cease to be valid or (iii) any action is commenced by Borrower or any of its Subsidiaries which contests the validity, perfection or enforceability of any of the Liens and security interests of Agent and the Lenders created by this Agreement or the Financing Order;

(g) If an order with respect to any of the Bankruptcy Cases shall be entered by the Bankruptcy Court converting any of the Bankruptcy Cases (or any case comprising part of any of the Bankruptcy Cases) to a case under chapter 7 of the Bankruptcy Code;

(h) If any plan of reorganization is filed that, or an order shall be entered by the Bankruptcy Court confirming a reorganization plan in any of the Bankruptcy Cases which, does not (i) contain a provision for termination of this Agreement and the Existing Loan Agreement, the Letter of Credit Collateralization in accordance with the provisions of this

Agreement or return for cancellation of all Letters of Credit, the cash collateralization of all contingent obligations hereunder and the indefeasible payment in full in cash of all Obligations and all Existing Secured Obligations ("Paid in Full") in a manner satisfactory to the Agent on or before the effective date, or substantial consummation, of such plan; provided, that the foregoing shall not affect the right of each Lender, if any, to object to any plan of reorganization and (ii) provide for the continuation of the Liens and security interests granted to Agent and priorities until such plan effective date all Obligations and Existing Secured Obligations are Paid in Full;

(i) If an order shall be entered by the Bankruptcy Court dismissing the any of the Bankruptcy Cases which does not contain a provision for termination of this Agreement and the Existing Loan Agreement and the Obligations and Existing Secured Obligations are not Paid in Full on or before such dismissal;

(j) If an order with respect to any of the Bankruptcy Cases shall be entered, (i) without the express prior written consent of Agent, to revoke, vacate, reverse, stay, modify, supplement or amend this Agreement and the transactions contemplated hereby, any Loan Document or the Financing Order, or (ii) unless in accordance with the Budget and with the express prior written consent of Agent, to permit any administrative expense or any claim (now existing or hereafter arising, of any kind or nature whatsoever) to have administrative priority as to Borrower's equal or superior to the priority of the Lender Group in respect of the Obligations, except for the amounts having a priority over the Obligations to the extent set forth in the definition of Carveout;

(k) If an order shall be entered by the Bankruptcy Court granting relief from the automatic stay to any creditor(s) of Parent or any Subsidiary of Parent with respect to any claim in an amount equal to or exceeding \$200,000 in the aggregate; provided, however, that it shall not be an Event of Default if relief from the automatic stay is granted (i) solely for the purpose of allowing such creditor to determine the liquidated amount of its claim against any such Person or (ii) to permit the commencement of or prosecution of a proceeding to collect solely against an insurance company;

(l) If a motion shall be filed seeking authority, or an order shall be entered in any of the Bankruptcy Cases, that (a) permits Parent or any Subsidiary of Parent to incur Indebtedness secured by any claim under Bankruptcy Code Section 364(c)(1) or by a Lien *pari passu* with or superior to the Lien granted under the Loan Documents and the Existing Loan Documents and Bankruptcy Code Sections 364(c)(2) or (d), unless (i) all of the Obligations and Existing Secured Obligations have been Paid in Full at the time of the entry of any such order, or (ii) the Obligations and the Existing Secured Obligations are Paid in Full with such debt, or (b) permits Parent or any Subsidiary of Parent the right to use Collateral other than in accordance with the terms of the Financing Order, unless all of the Obligations and Existing Secured Obligations shall have been Paid in Full;

(m) Proceeds of any sale of all or substantially all assets of Borrowers are not directly remitted to Agent at the closing thereof, and the Obligations and the Secured Obligations are not Paid in Full in accordance with the terms of this Agreement from such proceeds;



(n) Any motions to sell Collateral or approve procedures regarding the same or any plan or disclosure statement or supplements or amendments thereto are not in form and substance reasonably acceptable to Agent, or any orders approving or amending any of the foregoing are not in form and substance reasonably acceptable to Agent and Co-Collateral Agents;

(o) If Parent or any Subsidiary of Parent challenges the extent, validity or priority of the Obligations or the Existing Secured Obligations or the application of any payments or collections received by Agent, Co-Collateral Agents or Lenders to the Obligations or Existing Secured Obligations as provided for herein; or any Loan Party challenges the validity, extent, perfection or priority of any Liens granted in the Collateral to secure the Obligations or the Existing Secured Obligations;

(p) If Lenders or the Collateral are surcharged pursuant to Sections 105, 506(c), 552 or any other section of the Bankruptcy Code;

(q) If the Chief Restructuring Officer is terminated or disqualified for any reason, and Borrowers have not appointed a replacement Chief Restructuring Officer reasonably acceptable to Agent within 7 days thereafter; or

(r) Any application for any of the orders described in this Section 8.12 shall be made by any Person other than Agent and such application is not contested in good faith by each applicable Loan Party, or if such relief is granted, such applicable Loan Party does not obtain a stay pending appeal of the entry of such order.

## 9. RIGHTS AND REMEDIES.

9.1. **Rights and Remedies.** Notwithstanding the provisions of Section 362 of the Bankruptcy Code, upon the occurrence and during the continuation of an Event of Default and subject to any notice required under the Financing Orders, the Required Lenders (at their election but without notice of their election and without demand) may authorize and instruct Agent to do any one or more of the following on behalf of the Lender Group (and Agent, acting upon the instructions of the Required Lenders, shall do the same on behalf of the Lender Group), all of which are authorized by Borrowers:

(a) (i) declare the principal of, and any and all accrued and unpaid interest and fees in respect of, the Loans and all other Obligations (other than the Bank Product Obligations), whether evidenced by this Agreement or by any of the other Loan Documents to be immediately due and payable, whereupon the same shall become and be immediately due and payable and Borrowers shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or further notice or other requirements of any kind, all of which are hereby expressly waived by Borrowers, (ii) terminate any Letter of Credit that may be terminated in accordance with its terms, and (iii) direct Borrowers to provide (and Borrowers agree that upon receipt of such notice it will provide) Letter of Credit Collateralization to Agent to be held as security for Borrowers' reimbursement obligations for drawings that may subsequently occur under issued and outstanding Letters of Credit;

(b) cease advancing money or extending credit to or for the benefit of Borrowers under this Agreement, under any of the Loan Documents, or under any other agreement between Borrowers and the Lender Group;

(c) subject to the applicable terms, if any, of the Financing Order, terminate this Agreement and any of the other Loan Documents as to any future liability or obligation of the Lender Group, but without affecting any of the Agent's Liens in the Collateral and without affecting the Obligations;

(d) subject to the applicable terms, if any, of the Financing Order, the Lender Group shall have all other rights and remedies available at law or in equity or pursuant to any other Loan Document; and

(e) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents, under applicable law, or in equity.

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

## 10. **WAIVERS; INDEMNIFICATION.**

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

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

10.3. **Indemnification.** Borrowers shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable 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 (provided that Borrowers shall not be liable for costs and expenses (including attorneys' fees) of any Lender (other than WFCF and GECC) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents or any Existing Loan Document, or the transactions contemplated hereby or thereby or the monitoring of Parent's and its Subsidiaries' compliance with the terms of the Loan Documents (provided, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders, (ii) disputes solely between or among the Lenders and their respective Affiliates; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand, or (iii) any Taxes or any costs attributable to Taxes, which shall be governed by Section 16), (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document or any Existing Loan Document, or the use of the proceeds of the credit provided hereunder or under the Existing Loan Agreement (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Parent 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 Parent or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrowers shall have no obligation to any Indemnified Person under this Section 10.3 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, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment in full of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrowers were required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrowers with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

## 11. NOTICES.

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

If to any Borrower: **SCHOOL SPECIALTY, INC.**  
W6316 Design Drive  
Greenville, WI 54942  
Attn: Chief Financial Officer  
Fax No. 920-882-5863

with copies to: **PAUL, WEISS, RIFKIND, WHARTON &  
GARRISON LLP**  
1285 Avenue of the Americas  
New York, New York 10019-6064  
Attn: Jeffrey D. Saferstein, Esq., Alan W. Kornberg,  
Esq. and Elizabeth R. McColm, Esq.  
Fax No. (212) 757-3990

and: **GODFREY KAHN S.C.**  
780 North Water Street  
Milwaukee, Wisconsin 53202-3590  
Attn: Dennis Connolly, Esq.  
Fax No. (414) 273-5198

If to Agent: **WELLS FARGO CAPITAL FINANCE, LLC**  
150 South Wacker Drive, Suite 2200  
Chicago, Illinois 60603  
Attn: Account Manager – School Specialty  
Fax No. (312) 332-0429

with copies to: **GOLDBERG KOHN LTD.**  
55 East Monroe Street, Suite 3300  
Chicago, Illinois 60606  
Attn: Randall L. Klein & Jeremy M. Downs  
Fax No. (312) 332-2196

If to GECC: **GENERAL ELECTRIC CAPITAL  
CORPORATION**  
500 West Monroe  
Chicago, Illinois 60661  
Attn: Portfolio Manager – School Specialty  
Fax No. (203) 956-4783

with copies to: **WINSTON & STRAWN LLP**  
35 Wacker Drive  
Chicago, Illinois 60601  
Attn: Kevin M. Ryan, Esq. and  
Brian I. Swett, Esq.  
Fax No. (312) 558-5700

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or 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).

**12. CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER; JUDICIAL REFERENCE PROVISION.**

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO, AND ANY CLAIMS, CONTROVERSIES OR DISPUTES ARISING HEREUNDER OR THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY CODE.**

(b) **IF THE BANKRUPTCY COURT ABSTAINS FROM HEARING OR REFUSES TO EXERCISE JURISDICTION OVER ANY OF THE FOLLOWING, THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK, STATE OF NEW YORK; PROVIDED, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).**

(c) **TO THE MAXIMUM EXTENT PERMITTED BY APPLICABLE LAW, EACH BORROWER AND EACH MEMBER OF THE LENDER GROUP**

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

(d) EACH BORROWER HEREBY IRREVOCABLY AND UNCONDITIONALLY SUBMITS TO THE EXCLUSIVE JURISDICTION OF THE STATE AND FEDERAL COURTS LOCATED IN THE COUNTY OF NEW YORK AND THE STATE OF NEW YORK, IN ANY ACTION OR PROCEEDING ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENTS, OR FOR RECOGNITION OR ENFORCEMENT OF ANY JUDGMENT. EACH OF THE PARTIES HERETO AGREES THAT A FINAL JUDGMENT IN ANY SUCH ACTION OR PROCEEDING SHALL BE CONCLUSIVE AND MAY BE ENFORCED IN OTHER JURISDICTIONS BY SUIT ON THE JUDGMENT OR IN ANY OTHER MANNER PROVIDED BY LAW. NOTHING IN THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT SHALL AFFECT ANY RIGHT THAT AGENT MAY OTHERWISE HAVE TO BRING ANY ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN THE COURTS OF ANY JURISDICTION.

(e) NO CLAIM MAY BE MADE BY ANY LOAN PARTY AGAINST THE AGENT, THE SWING LENDER, ANY OTHER LENDER, ISSUING LENDER, OR THE UNDERLYING ISSUER, OR ANY AFFILIATE, DIRECTOR, OFFICER, EMPLOYEE, COUNSEL, REPRESENTATIVE, AGENT, OR ATTORNEY-IN-FACT OF ANY OF THEM FOR ANY SPECIAL, INDIRECT, CONSEQUENTIAL, OR PUNITIVE DAMAGES IN RESPECT OF ANY CLAIM FOR BREACH OF CONTRACT OR ANY OTHER THEORY OF LIABILITY ARISING OUT OF OR RELATED TO THE TRANSACTIONS CONTEMPLATED BY THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, OR ANY ACT, OMISSION, OR EVENT OCCURRING IN CONNECTION THEREWITH, AND EACH LOAN PARTY HEREBY WAIVES, RELEASES, AND AGREES NOT TO SUE UPON ANY CLAIM FOR SUCH DAMAGES, WHETHER OR NOT ACCRUED AND WHETHER OR NOT KNOWN OR SUSPECTED TO EXIST IN ITS FAVOR.

13. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS.**

13.1. **Assignments and Participations.**

(a) (i) Subject to the conditions set forth in clause (a)(ii) below, any Lender may assign and delegate all or any portion of its rights and duties under the Loan Documents (including the Obligations owed to it and its Commitments) to one or more assignees so long as such prospective assignee is an Eligible Transferee (each, an "Assignee"), with the prior written consent (such consent not be unreasonably withheld or delayed, and such consent not to be required in connection with the exercise of any purchase right under Section 10 of the Split Lien Intercreditor Agreement) of:

(A) Administrative Borrower (not to be unreasonably withheld or delayed); provided, that no consent of Administrative Borrower shall be required (1) if an Event of Default has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender or a Related Fund; provided further, that Administrative Borrower shall be deemed to have consented to a proposed assignment unless it objects thereto by written notice to Agent within 5 Business Days after having received notice thereof; and

(B) Agent, Swing Lender, and Issuing Lender; provided, that no consent of Agent, Swing Lender or Issuing Lender shall be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than natural persons) of a Lender or a Related Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) no assignment may be made to a natural person,

(B) no assignment may be made to a Loan Party or an Affiliate of a Loan Party,

(C) the amount of the Commitments and the other rights and obligations of the assigning Lender hereunder and under the other Loan Documents subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to Agent) shall be in a minimum amount (unless waived by Agent) of \$5,000,000 (except such minimum amount shall not apply to (I) an assignment or delegation by any Lender to any other Lender, an Affiliate of any Lender, or a Related Fund of such Lender or (II) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least \$5,000,000);

(D) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement;

(E) the parties to each assignment shall execute and deliver to Agent an Assignment and Acceptance; provided, that Borrowers and Agents may continue to

deal solely and directly with the assigning Lender in connection with the interest so assigned to an Assignee until written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Administrative Borrower and Agent by such Lender and the Assignee.

(F) unless waived by Agent, the assigning Lender or Assignee has paid to Agent, for Agent's separate account, a processing fee in the amount of \$3,500 (for the avoidance of doubt, neither the assigning Lender nor Assignee may seek reimbursement of such fee from a Credit Party); provided, that, with respect to any assignment pursuant to Section 14.2, such fee, if applicable, shall not be paid by assigning Lender; and

(G) the assignee, if it is not a Lender, shall deliver to Agent an Administrative Questionnaire in a form approved by Agent (the "Administrative Questionnaire").

(b) From and after the date that Agent receives the executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

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



this Agreement and the other Loan Documents as are delegated to Agent, by the terms hereof and thereof, together with such powers as are reasonably incidental thereto, and (vi) such Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrowers, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, (v) no participation shall be sold to a natural person, (vi) no participation shall be sold to a Loan Party or an Affiliate of a Loan Party, and (vii) all amounts payable by Borrowers hereunder shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrowers, the Collateral, or otherwise in respect of

the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Parent and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Agent (as a non-fiduciary agent on behalf of Borrowers) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Revolver Commitments (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Revolver Commitments to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrowers shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Revolver Commitments to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrowers, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrowers, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall

expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register in the extent it has one) available for review by Borrowers from time to time as Borrowers may reasonably request.

13.2. **Successors.** This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, that no Borrower may assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release any Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by any Loan Party is required in connection with any such assignment.

#### 14. **AMENDMENTS; WAIVERS.**

##### 14.1. **Amendments and Waivers.**

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Bank Product Agreements or the Fee Letter), and no consent with respect to any departure by Borrowers therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, that:

(i) no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(A) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c),

(B) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document, and

(C) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders),

(ii) no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders and all of the Loan Parties that are party thereto, do any of the following:

(A) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(B) amend, modify, or eliminate Section 3.1 or 3.2,

(C) amend, modify, or eliminate Section 15.11,

(D) other than as permitted by Section 15.11, release Agent's Lien in and to any of the Collateral,

(E) amend, modify, or eliminate the definitions of "Required Lenders" or "Pro Rata Share",

(F) contractually subordinate any of Agent's Liens,

(G) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release any Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by any Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(H) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or (ii),

(I) amend, modify, or eliminate items 4, 5 or 6 set forth on Schedule 5.16, or

(J) amend, modify, or eliminate any of the provisions of Section 13.1 with respect to assignments to, or participations with, Persons who are Loan Parties or Affiliates of Loan Parties,

(K) amend, modify, or eliminate the definition of "Budget,"

(L) amend, modify, or eliminate the definition of Availability Reserve,

(M) amend, modify, supplement, alter or eliminate any of the provisions of Section 5.16 or Schedule 5.16 or waive any default or Event of Default in connection with Section 5.16,

(N) amend, modify, supplement, alter or eliminate any of the provisions of Section 6.15 or waive any default or Event of Default in connection with Section 6.15, or

(O) amend, modify, supplement, alter or eliminate Section 8.6(a) or waive any default or Event of Default in connection with Section 8.6(a) that arises on account of the occurrence of a Split Lien Termination Date.

(b) No amendment, waiver, modification, or consent shall amend, modify, waive, or eliminate,

(i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrowers (and shall not require the written consent of any of the Lenders),

(ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrowers, and the Required Lenders, or

(iii) any provision of Section 15 pertaining to Co-Collateral Agents, or any other rights or duties of Co-Collateral Agents under this Agreement or the other Loan Documents, without the written consent of each Co-Collateral Agent, Borrowers, and the Required Lenders,

(c) No amendment, waiver, modification, elimination, or consent shall, without written consent of Borrowers and each Lender (i) modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, and Eligible Inventory) that are used in such definition to the extent that any such change results in more credit being made available to Borrowers based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount or (ii) amend, modify or waive Section 2.1(c),

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender or Underlying Issuer under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Agent, Borrowers, and the Required Lenders,

(e) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrowers, and the Required Lenders,

(f) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of any Borrower, shall not require consent by or the agreement of any Loan Party, and (ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender other than any of the matters governed by Section 14.1(a)(i) that affect such Lender.

14.2. **Replacement of Certain Lenders.**

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrowers or Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Non-Consenting Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Non-Consenting Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Non-Consenting Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Non-Consenting Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Non-Consenting Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of participations in the Letters of Credit). If the Non-Consenting Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Non-Consenting Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Non-Consenting Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Non-Consenting Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Non-Consenting Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Non-Consenting Lender or Tax Lender, as applicable, shall remain obligated to make the Non-Consenting Lender's or Tax Lender's, as applicable, Pro Rata Share of Revolving Loans and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of participations in such Letters of Credit.

14.3. **No Waivers; Cumulative Remedies.** No failure by Agent, any Co-Collateral Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrowers of any provision of this Agreement. Agent's, each Co-Collateral Agent's and each Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent, any Co-Collateral Agent or any Lender may have.

15. **AGENT; THE LENDER GROUP.**

15.1. **Appointment and Authorization of Agent.**

(a) Each Lender hereby designates and appoints WFCF as its agent and each of WFCF and GECC as its co-collateral agents under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent and each Co-Collateral Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent and each Co-Collateral Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) and each Co-Collateral Agent agrees to act as a co-collateral agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, neither Agent nor any Co-Collateral Agent shall have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent nor any Co-Collateral Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent or any Co-Collateral Agent, as the case may be. Without limiting the generality of the foregoing, the use of the term "agent" and "co-collateral agent" in this Agreement or the other Loan Documents with reference to Agent or any Co-Collateral Agent, as the case may be, is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Except as expressly otherwise provided in this Agreement, each Co-Collateral Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Co-Collateral Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent or any Co-Collateral Agent, as the case may be, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, payments and proceeds of Collateral, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Revolving Loans, for itself or

on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of the Loan Parties as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to Borrowers or their Subsidiaries, the Obligations, the Collateral, the Collections of the Loan Parties, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

(b) With respect to any action or determination to be taken or made by the Co-Collateral Agents hereunder or under any of the other Loan Documents, Co-Collateral Agents hereby agree to seek, in good faith, to reach a consensus decision for such action or determination. If Co-Collateral Agents are unable to agree on the action to be taken or the determination to be made, the determination or action shall be made by the Co-Collateral Agent either asserting the more conservative credit judgment (that is, that would result in the least amount of credit being available to the Borrowers and their Subsidiaries under this Agreement) or declining to permit the requested action for which consent is being sought by the Borrowers, as applicable.

15.2. **Delegation of Duties.** Agent and each Co-Collateral Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Neither Agent nor any Co-Collateral Agent shall be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent.** None of the Agent-Related Persons shall (a) be liable for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Parent or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent or any Co-Collateral Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Parent or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Parent or its Subsidiaries.

15.4. **Reliance by Agents.** Agent and each Co-Collateral Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission,



telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrowers or counsel to any Lender), independent accountants and other experts selected by Agent or such Co-Collateral Agent, as applicable. Agent and each Co-Collateral Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent or such Co-Collateral Agent, as applicable, shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent or such Co-Collateral Agent, as applicable, shall act, or refrain from acting, as it deems advisable. If Agent or any Co-Collateral Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5. **Notice of Default or Event of Default.** Neither Agent nor any Co-Collateral Agent shall be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except, in the case of Agent, with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent and Co-Collateral Agents shall have received written notice from a Lender or Administrative Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agents of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. **Credit Decision.** Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent or any Co-Collateral Agent hereinafter taken, including any review of the affairs of Parent and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrowers. Each Lender also represents (and by entering into a Bank Product

Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of any Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, neither Agent nor any Co-Collateral Agent shall have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of any Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that neither Agent nor any Co-Collateral Agent has any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to Borrowers, their Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or any Co-Collateral Agent's or their respective Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7. **Costs and Expenses; Indemnification.** Agents may incur and pay Lender Group Expenses to the extent they reasonably deem necessary or appropriate for the performance and fulfillment of their functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrowers are obligated to reimburse Agents or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from payments or proceeds of the Collateral received by Agent to reimburse Agents for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent or any Co-Collateral Agent is not reimbursed for such costs and expenses by Parent or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent or such Co-Collateral Agent, as applicable, such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrowers and without limiting the obligation of Borrowers to do so) from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make a Revolving Loan or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent and such Co-Collateral Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by

Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent or such Co-Collateral Agent, as applicable, is not reimbursed for such expenses by or on behalf of Borrowers. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity.**

(a) WFCF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFCF were not Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFCF or its Affiliates may receive information regarding Parent or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFCF in its individual capacity.

(b) GECC and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though GECC were not a Co-Collateral Agent hereunder, and, in each case, without notice to or consent of the other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, GECC or its Affiliates may receive information regarding Parent or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver GECC will use its reasonable best efforts to obtain), GECC in its capacity as Co-Collateral Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include GECC in its individual capacity.

15.9. **Successor Agent.** Agent may resign as Agent upon 30 days (10 days if an Event of Default has occurred and is continuing) prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Administrative Borrower (unless such notice is

waived by Administrative Borrower or an Event of Default exists) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Administrative Borrower (such consent not to be unreasonably withheld, delayed, or conditioned), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as a Co-Collateral Agent, as Issuing Lender or the Swing Lender, such resignation shall also operate to effectuate its resignation as a Co-Collateral Agent, Issuing Lender or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation or duties as a Co-Collateral Agent, to issue Letters of Credit, to cause the Underlying Issuer to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Administrative Borrower, a successor Agent. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Administrative Borrower (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder (other than the duties of a Co-Collateral Agent) until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. **Lender in Individual Capacity.** Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire Equity Interests in and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Parent and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Parent or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Parent or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. **Collateral Matters.**

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrowers of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Administrative Borrower certifies to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Parent or its Subsidiaries owned no interest at the time Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to Parent or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any sale or other disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders and the Bank Product Providers shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Agent to credit bid or purchase at such sale or other disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders and the Bank Product Providers whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle or vehicles and in connection therewith Agent may reduce the Obligations owed to the Lenders and the Bank Product Providers (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Administrative Borrower at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, that (1) Agent shall not be required to

execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by Parent or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

15.12. **Restrictions on Actions by Lenders; Sharing of Payments.**

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, and that it shall, to the extent it is lawfully entitled to do so, upon the written request of Agent, set off against the Obligations, any amounts owing by such Lender to Parent or its Subsidiaries or any deposit accounts of Parent or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against any Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and

for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, that to the extent that such excess payment received by the purchasing party is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. **Agency for Perfection.** Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders.** All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents.** Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16. **Field Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information.** By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field examination report respecting Parent or its Subsidiaries (each, a "Report") prepared by or at the request of Agent or any Co-Collateral Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent and each Co-Collateral Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent, or Co-Collateral Agents or other party performing any field examination will inspect only specific information regarding Parent and its Subsidiaries and will rely significantly upon Parent's and its Subsidiaries' books and records, as well as on representations of Borrowers' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Parent and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent, any Co-Collateral Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrowers, and (ii) to pay and protect, and indemnify, defend and hold Agent, any Co-Collateral Agent and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys' fees and costs) incurred by Agent, any such Co-Collateral Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

(f) In addition to the foregoing, (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Parent or its Subsidiaries to Agent that has not been contemporaneously provided by Parent or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Parent or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Administrative Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Parent or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrowers a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. **Several Obligations; No Liability.** Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or



liability to any Participant of any other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to any Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

15.18. **Co-Lead Arrangers, Syndication Agent and Joint Book Runners.** Each of the Co-Lead Arrangers, Syndication Agent and Joint Book Runners, in such capacities, shall not have any right, power, obligation, liability, responsibility, or duty under this Agreement other than those applicable to it in its capacity as a Lender, as Agent, as Swing Lender, or as Issuing Lender. Without limiting the foregoing, each of the Co-Lead Arrangers, Syndication Agent and Joint Book Runners, in such capacities, shall not have or be deemed to have any fiduciary relationship with any Lender or any Loan Party. Each Lender, Agent, Swing Lender, Issuing Lender, and each Loan Party acknowledges that it has not relied, and will not rely, on the Co-Lead Arrangers, Syndication Agent and Joint Book Runners in deciding to enter into this Agreement or in taking or not taking action hereunder. Each of the Co-Lead Arrangers, Syndication Agent and Joint Book Runners, in such capacities, shall be entitled to resign at any time by giving notice to Agent and Borrowers.

## 16. **WITHHOLDING TAXES.**

16.1. **Payments.** All payments made by Borrowers 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 Indemnified Taxes, and in the event any deduction or withholding of Indemnified Taxes is required, Borrowers shall comply with the next sentence of this Section 16.1. If any Indemnified Taxes are so levied or imposed, Borrowers agree to pay the full amount of such Indemnified Taxes and such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16.1 after withholding or deduction for or on account of any Indemnified Taxes, will not be less than the amount provided for herein; provided, that Borrowers shall not be required to increase any such amounts to the extent that the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrowers will furnish to Agent as promptly as possible after the date the payment of any Indemnified Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrowers. Borrowers agree 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.

### 16.2. **Exemptions.**

(a) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of

Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of any Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to any Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

(b) Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(c) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms, provided, that nothing in this Section 16.2(c) shall require a Lender or Participant to disclose any information that it deems to be confidential (including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and to promptly notify Agent (or, in the case of a Participant, to the

Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrowers to such Lender or Participant, such Lender or Participant agrees to notify Agent (or, in the case of a sale of a participation interest, to the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrowers to such Lender or Participant. To the extent of such percentage amount, Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 16.2(a) or 16.2(c) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16.2(a) or 16.2(c), if applicable. Borrowers agree that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

### 16.3. **Reductions.**

(a) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Section 16.2(a) or 16.2(c) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, to the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(b) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, to the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, to the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, to the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys' fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

16.4. **Refunds.** If Agent or a Lender determines, in its sole discretion in good faith, that it has received a refund of any Indemnified Taxes to which Borrowers have paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrowers (but only to the extent of payments made, or additional amounts paid, by Borrowers under this Section 16 with respect to Indemnified Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the applicable Governmental Authority with respect to such a refund); provided, that Borrowers, upon the request of Agent or such Lender, agrees to repay the amount paid over to Borrowers (plus any penalties, interest or other charges, imposed by the applicable Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to any Borrower or any other Person.

16.5. **Tax Indemnity.** The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") (but with respect to a Participant subject to the last sentence of Section 16.2(d)) for the full amount of Taxes or other taxes arising in connection with this Agreement or any other Loan Document (including, without limitation, any Taxes or other taxes imposed or asserted on or attributable to amounts payable under this Section 16) paid by such Tax Indemnitee and all reasonable fees and disbursements of attorneys, experts, or consultants and all other out-of-pocket 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, whether or not such Taxes or such other taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Taxes or such other taxes resulting from gross negligence or willful misconduct of such Tax Indemnitee as finally determined by a court of competent jurisdiction and any tax imposed on the net income or net profits of any Indemnified Person (including any branch profits taxes)). This Section 16.5 shall survive the termination of this Agreement and the repayment of the Obligations.

## 17. GENERAL PROVISIONS.

17.1. **Effectiveness.** This Agreement shall be binding and deemed effective when executed by Borrowers, Agent, each Co-Collateral Agent, and each Lender whose signature is provided for on the signature pages hereof.

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

17.3. **Interpretation.** Neither this Agreement nor any uncertainty or ambiguity herein shall be construed against the Lender Group or any Borrower, whether under any rule of construction or otherwise. On the contrary, this Agreement has been reviewed by all parties and

shall be construed and interpreted according to the ordinary meaning of the words used so as to accomplish fairly the purposes and intentions of all parties hereto.

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

17.5. **Bank Product Providers.** Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents; it 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 Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Co-Collateral Agents 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 Co-Collateral Agents to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the applicable Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the applicable Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrowers may obtain Bank Products from any Bank Product Provider, although no Borrower is required to do so. Borrowers acknowledge and agree that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6. **Debtor-Creditor Relationship.** The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and

debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. **Counterparts; Electronic Execution.** This Agreement 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. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8. **Revival and Reinstatement of Obligations; Certain Waivers.**

If the incurrence or payment of the Obligations by any Loan Party or the transfer to the Lender Group 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 the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the advice of counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys' fees of the Lender Group related thereto, the liability of Loan Parties automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.9. **Confidentiality.**

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Parent and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such

information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation; provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Administrative 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 Administrative 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 Administrative 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 Administrative 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 Administrative 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 Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information 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; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than any Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Administrative Borrower with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, Agent may disclose information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services or in its marketing or promotional materials, with such information to consist of deal terms and other information customarily found in such publications or marketing or promotional materials and may otherwise use the name, logos, and other insignia of any Borrower or the other Loan Parties and the Commitments provided hereunder in any "tombstone" or other advertisements, on its website or in other marketing materials of the Agent.

(c) The Loan Parties hereby acknowledge that Agent or its Affiliates may make available to the Lenders materials or information provided by or on behalf of Borrowers hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on IntraLinks, SyndTrak or another similar electronic system (the "Platform") and certain of the Lenders may be "public-side" Lenders (i.e., Lenders that do not wish to receive material non-public

information with respect to the Loan Parties or their securities) (each, a "Public Lender"). The Loan Parties shall be deemed to have authorized Agent and its Affiliates and the Lenders to treat Borrower Materials marked "PUBLIC" or otherwise at any time filed with the SEC as not containing any material non-public information with respect to the Loan Parties or their securities for purposes of United States federal and state securities laws. All Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated as "Public Investor" (or another similar term). Agent and its Affiliates and the Lenders shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" or that are not at any time filed with the SEC as being suitable only for posting on a portion of the Platform not marked as "Public Investor" (or such other similar term).

17.10. **Survival.** All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any Loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, Issuing Lender, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of, or any accrued interest on, any Loan or any fee or any other amount payable under this Agreement is outstanding or unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or been terminated.

17.11. **Patriot Act.** Each Lender that is subject to the requirements of the Patriot Act hereby notifies each Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies each Borrower, which information includes the name and address of each Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act. In addition, if Agent 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 for the Loan Parties' senior management and key principals, and Borrowers agree to cooperate in respect of the conduct of such searches and further agree that the reasonable costs and charges for such searches shall constitute Lender Group Expenses hereunder and be for the account of Borrowers.

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

17.13. **Split Lien Intercreditor Agreement.** Agent and each Lender hereunder, by its acceptance of the benefits provided hereunder, (a) consents to the subordination of Liens



provided for in the Split Lien Intercreditor Agreement, (b) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Split Lien Intercreditor Agreement, and (c) authorizes and instructs the Agent to enter into the Split Lien Intercreditor Agreement as Agent on behalf of each Lender. Agent and each Lender hereby agrees that the terms, conditions and provisions contained in this Agreement are subject to the Split Lien Intercreditor Agreement and, in the event of a conflict between the terms of the Split Lien Intercreditor Agreement and this Agreement, the terms of the Split Lien Intercreditor Agreement shall govern and control. Agent agrees to deliver to Administrative Borrower a copy of any written notice delivered to Split Lien Agent pursuant to the Intercreditor Agreement.

17.14. **Parent as Agent for Borrowers.** Each Borrower hereby irrevocably appoints Parent as the borrowing agent and attorney-in-fact for all Borrowers ("Administrative Borrower") which appointment shall remain in full force and effect unless and until Agent shall have received prior written notice signed by each Borrower that such appointment has been revoked and that another Borrower has been appointed Administrative Borrower. Each Borrower hereby irrevocably appoints and authorizes Administrative Borrower (i) to provide Agent with all notices with respect to Revolving Loans (inclusive of Swing Loans) and Letters of Credit obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as Administrative Borrower deems appropriate on its behalf to obtain Revolving Loans (inclusive of Swing Loans) and Letters of Credit and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. Each Borrower hereby jointly and severally agrees to indemnify each member of the Lender Group and hold each member of the Lender Group harmless against any and all liability, expense, loss or claim of damage or injury, made against the Lender Group by any Credit Party or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Loan Account and Collateral of Borrowers as herein provided, (b) the Lender Group's relying on any instructions of Administrative Borrower, or (c) any other action taken by the Lender Group hereunder or under the other Loan Documents, except that Borrowers will have no liability to the relevant Agent-Related Person or Lender-Related Person under this Section 17.14 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence or willful misconduct of such Agent-Related Person or Lender-Related Person, as the case may be.

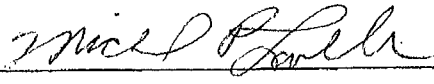
17.15. **Senior Debt.** The Obligations are intended to be senior Indebtedness, and not subordinated to any other senior Indebtedness, or made *pari passu* with Indebtedness that is subordinated to any other Indebtedness, of any Loan Party. The Obligations are deemed to be expressly designated and named as "Designated Senior Debt", "Designated Senior Indebtedness," "Senior Indebtedness" or similar terms for purposes of any present or future loan agreement, indenture, note issuance or purchase agreement or other document under which such a designation is applicable or available for senior Indebtedness of any Loan Party (including without limitation the Indebtedness under the Convertible Note Indenture).

[Signature pages to follow.]


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

**BORROWERS:**


**SCHOOL SPECIALTY, INC.**, a Wisconsin corporation

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


**CLASSROOMDIRECT.COM, LLC**, a Delaware limited liability company

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

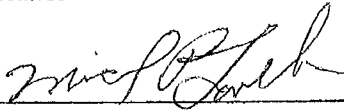
**SPORTIME, LLC**, a Delaware limited liability company

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


**DELTA EDUCATION, LLC**, a Delaware limited liability company

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


**PREMIER AGENDAS, INC.,** a Washington  
corporation

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


**CHILDCRAFT EDUCATION CORP.,** a New York  
corporation

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

**BIRD-IN-HAND WOODWORKS, INC.,** a New  
Jersey corporation

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


**CALIFONE INTERNATIONAL, INC.,** a Delaware  
corporation

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

**WELLS FARGO CAPITAL FINANCE, LLC**, a  
Delaware limited liability company, as Agent, as Co-  
Collateral Agent, and as a Lender

By: Laura Nickels  
Name: LAURA NICKELS  
Its Authorized Signatory

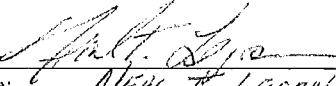
**GENERAL ELECTRIC CAPITAL CORPORATION, a**  
Delaware corporation, as a Co-Collateral Agent, and as a  
Lender

By:   
Name: Kai Sorensen  
Its Authorized Signatory

**BANK OF MONTREAL, as a Lender**

By: Stephanie Slavin  
Name: Stephanie Slavin  
Its Authorized Signatory

CIT FINANCE LLC,, as a Lender

By:   
Name: MARC T. LEGAN  
Its Authorized Signatory

### **Schedule 1.1**

As used in the Agreement, the following terms shall have the following definitions:

"ABL Priority Collateral" has the meaning set forth in the Split Lien Intercreditor Agreement.

"Accelerated Learning Business" means the Accelerated Learning Business Segments, collectively and taken as a whole.

"Accelerated Learning Business Segments" means the collective reference to, and individually any one of, (i) the Delta Business, (ii) Reading Business, (iii) Health Business, and (iv) Planner Business.

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

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

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

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

"Administrative Borrower" has the meaning specified therefor in Section 17.14.

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

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of the 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 Equity Interests, by contract, or otherwise; provided, that, for purposes of the definition of Eligible Accounts and Section 6.10 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Equity Interests having ordinary voting power for the election of directors or other members of the 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.

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

"Agents" means the Agent and the Co-Collateral Agents.

"Agent-Related Persons" means Agent and each Co-Collateral Agent, together with their Affiliates, officers, directors, employees, attorneys, and agents.

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

"Agent's Liens" means the Liens granted by Parent or its Subsidiaries to Agent under the Loan Documents and securing the Obligations.

"Agreement" means the Debtor-in-Possession Credit Agreement to which this Schedule 1.1 is attached.

"APA Closing Date" has the meaning ascribed to the term "Closing Date" in the Asset Purchase Agreement.

"Applicable Margin" means, as of any date of determination and with respect to Base Rate Loans, 2.75 percentage points, or LIBOR Rate Loans, 3.75 percentage points.

"Applicable Unused Line Fee Percentage" means 0.50 percentage points.

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

"Asset Purchase Agreement" mean the Asset Purchase Agreement, dated as of January 28, 2013, among Bayside School Specialty, LLC, School Specialty, Inc. and the other sellers named therein, in form and substance acceptable to Agent and Co-Collateral Agents.

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

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1 to the Agreement.

"Authorized Person" means any one of the individuals identified on Schedule A-2 to the Agreement, as such schedule is updated from time to time by written notice from Administrative Borrower to Agent.

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

"Availability Reserve" means \$5,000,000.

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

"Avoidance Actions" means any and all claims and causes of action of any Borrower's estate arising under Sections 542, 544, 545, 547, 548, 549, 550, 551, 553(b) or 724(a) of the Bankruptcy Code, together with any proceeds therefrom.

"Avoided Payments" has the meaning set forth in Section 2.4(e)(vii).

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

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

"Bank Product Collateralization" means providing cash collateral (pursuant to documentation reasonably satisfactory to Agent) to be held by Agent for the benefit of the Bank Product Providers (other than the Hedge Providers) in an amount determined by Agent 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 Parent or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Parent or its Subsidiaries; provided, in order for any item described in clauses (a) (b), or (c) above, as applicable, to constitute "Bank Product Obligations", if the applicable Bank Product Provider is any Person other than Wells Fargo or its Affiliates, then the applicable Bank Product must have been provided on or after the Closing Date and Agent shall have received a Bank Product Provider Agreement within 10 days after the date of the provision of the applicable Bank Product to Parent or its Subsidiaries.

"Bank Product Provider" means any Lender or any of its Affiliates, including each of the foregoing in its capacity, if applicable, as a Hedge Provider; provided, that no such Person shall constitute a Bank Product Provider with respect to a Bank Product unless and until (x) in the case of Wells Fargo or its Affiliates, Agent shall have received a Bank Product Provider Agreement from such Person and with respect to the applicable Bank Product prior to the date that is 10 days after the provision of such Bank Product to Parent or its Subsidiaries, or (y) in the case of any other Person, Agent shall have received a Bank Product Provider Agreement from such Person and with respect to the applicable Bank Product within 10 days after the provision of such Bank Product to Parent or its Subsidiaries; provided further, that if, at any time, a Lender ceases to be a Lender under the Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Bank Product Providers and the obligations with respect to Bank Products provided by such former Lender or any of its Affiliates shall no longer constitute Bank Product Obligations.

"Bank Product Provider Agreement" means (a) in the case of a Bank Product Provider other than WFB or one of its Affiliates, an agreement in substantially the form attached hereto as Exhibit B-2 to the Agreement, in form and substance satisfactory to Agent, duly executed by the applicable Bank Product Provider, Administrative Borrower, and Agent, and (b) in the case of WFB or one of its Affiliates, an agreement between such Bank Product Provider and Agent in form and substance satisfactory to Agent.

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

"Bankruptcy Cases" means the cases of Borrowers jointly administered under chapter 11 of the Bankruptcy Code pending before the Bankruptcy Court, bearing case number [ ] and any superseding chapter 7 case or cases.

"Bankruptcy Code" means the United States Code (11 U.S.C. §§ 101, *et seq.*), as amended, and any successor statute, as in effect from time to time.

"Bankruptcy Court" has the meaning set forth in the recitals to the Agreement.

"Base Rate" means the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

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

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

"Bayside Sale" means a sale pursuant to Section 363 of the Bankruptcy Code of all or substantially all of the assets of the Borrowers to the Split Lien Agent or one or more of its affiliates.

"Benefit Plan" means a "defined benefit plan" (as defined in Section 3(35) of ERISA) for which Parent 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.

"Bidding Procedure Order" has the meaning set forth in the Asset Purchase Agreement.

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

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

"Borrower" has the meaning specified therefor in the preamble to the Agreement.

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

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

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

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

(b) *the lower of*

(i) the product of 65% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Inventory (other than Eligible Slow Moving Inventory) at such time, and

(ii) the product of 85% multiplied by the Net Recovery Percentage identified in the most recent inventory appraisal ordered and obtained by Agent or the Co-Collateral Agents multiplied by the value (calculated at the lower of cost or market on a basis consistent with the Borrowers' historical accounting practices) of Eligible Inventory (other than Eligible Slow Moving Inventory) (such determination may be made as to different categories of

Eligible Inventory based upon the Net Recovery Percentage applicable to such categories) at such time, *plus*

(c) *the lowest of*

(i) the product of 65% multiplied by the value (calculated at the lower of cost or market on a basis consistent with Borrowers' historical accounting practices) of Eligible Inventory that is Eligible Slow Moving Inventory at such time,

(ii) the product of 85% multiplied by the Net Recovery Percentage identified in the most recent inventory appraisal ordered and obtained by Agent or the Co-Collateral Agents multiplied by the value (calculated at the lower of cost or market on a basis consistent with the Borrowers' historical accounting practices) of Eligible Inventory that is Eligible Slow Moving Inventory (such determination may be made as to different categories of Eligible Inventory based upon the Net Recovery Percentage applicable to such categories) at such time, and

(iii) the Slow Moving Cap, *minus*

(d) the sum of (without duplication) (i) Availability Reserve, (ii) the Bank Product Reserve, (iii) Carveout Expense Reserve, and (iv) the aggregate amount of reserves, if any, established by Co-Collateral Agents under Section 2.1(c) of the Agreement.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"Budget" means the initial budget (a copy of which is attached as Exhibit B-2), projecting operations for the ensuing six-month period and including, without limitation, (i) a thirteen-week cash flow forecast, (ii) a six-month consolidated balance sheet, income statement and statement of cash flows, and (iii) income statements by Business Segment, as amended, modified or supplemented from time to time, in the case of non-material amendments, modifications or supplements, with Agent's written consent and otherwise with the consent of each Lender; such thirteen-week cash flow forecast to be updated (in substantially the same format as the prior thirteen-week cash flow forecast) monthly by Borrowers in accordance with Section 5.1, submitted to Agent and, upon acceptance in writing by Agent in its sole discretion with respect to non-material updates and upon acceptance in writing by each Lender with respect to any other updates, the prior Budget, as modified by the updated thirteen-week cash flow forecast shall constitute the then Budget.

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

"Business Segment Financial Statements" means the consolidated and consolidating monthly, quarterly and annual financial statements, including, in the case of clauses (w), (x) and (y) below, balance sheets, income statements, and statements of capital

expenditures, retained earnings and shareholders' equity, and Product Development Expense, and (in the case of clause (z) below) statements of revenue, gross margin, capital expenditures, and Product Development Expense, in any event in no less a level of detail than the financial statements provided to the Agent prior to the Closing Date, reflecting the performance of (w) the Accelerated Learning Business (accompanied by reconciling information in detail reasonably satisfactory to the Agent for any Reconcilable Inclusions with respect to the Accelerated Learning Business), (x) the Educational Resources Business, (y) each Business Segment on a standalone basis (accompanied, in the case of the Planner Business, by reconciling information in detail reasonably satisfactory to the Agent for any Reconcilable Inclusions with respect to the Planner Business), and (z) each Delta Business Sub-Segment on a standalone basis.

"Business Segments" means, collectively, each Accelerated Learning Business Segment and each Educational Resources Business Segment.

"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.

"Carveout" has the meaning set forth in the Interim Order or the Final Order, as applicable.

"Carveout Expense Reserve" means, as of any date of determination, a reserve established on account of the Carveout and Other Statutory Liabilities.

"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, at the time of acquisition, having one of the two 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 at the date of acquisition thereof combined capital and surplus of not less than \$1,000,000,000, (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 \$1,000,000,000, 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 store 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 customary cash management arrangements.

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

"Change in Control" means that:

(a) any Person or two or more Persons acting in concert, shall have acquired beneficial ownership, directly or indirectly, of Equity Interests of Parent (or other securities convertible into such Equity Interests) representing 30% or more of the combined voting power of all Equity Interests of Parent entitled (without regard to the occurrence of any contingency) to vote for the election of members of the Board of Directors of Parent;

(b) any Person or two or more Persons acting in concert, shall have acquired by contract or otherwise, or shall have entered into a contract or arrangement that, upon consummation thereof, will result in its or their acquisition of the power to exercise, directly or indirectly, a controlling influence over the management or policies of Parent or control over the Equity Interests of such Person entitled to vote for members of the Board of Directors of Parent on a fully-diluted basis (and taking into account all such Equity Interests that such Person or group has the right to acquire pursuant to any option right) representing 30% or more of the combined voting power of such Equity Interests;

(c) during any period of 24 consecutive months commencing on or after the Closing Date, the occurrence of a change in the composition of the Board of Directors of Parent such that a majority of the members of such Board of Directors are not Continuing Directors;

(d) Parent fails to own and control, directly or indirectly, 100% of the Equity Interests of each other Loan Party;

(e) the occurrence of any "Change in Control" as defined in the Split Lien Credit Agreement; or

(f) the occurrence of any "Change of Control" as defined in the Convertible Note Indenture.

"Chief Restructuring Officer" means Mr. Thomas E. Hill, a representative of Alvarez & Marsal North America, LLC ("Alvarez & Marsal"), in his capacity as Chief

Restructuring Officer duly appointed and authorized by Borrowers, on terms and conditions reasonably acceptable to Agent and Lenders.

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

"Co-Collateral Agents" means, collectively, the Agent and GECC, each in its capacity as a co-collateral agent and any successor co-collateral agents.

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

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Parent or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent, Co-Collateral Agents or the Lenders under any of the Loan Documents. Without limitation of the foregoing, subject to the terms of the Interim Order and Final Order, the Collateral shall include all proceeds of any and all Avoidance Actions.

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

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

"Committees" means, collectively, the official committee of unsecured creditors and any other committee formed, appointed or approved in any Chapter 11 Case.

"Commodity Hedging Obligations" means any and all obligations of the Borrowers and their Subsidiaries under (a) any and all agreements, devices or arrangements designed to protect any Borrowers or any of their Subsidiaries from the fluctuations of commodity prices, commodity price cap or collar protection agreements, and commodity forward and future contracts, swaps, options, puts and warrants, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any of the foregoing.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 to the Agreement delivered by the chief financial officer of Administrative Borrower to Agent.



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

"Continuing Director" means (a) any member of the Board of Directors who was a director (or comparable manager) of Parent on the Closing Date, and (b) any individual who becomes a member of the Board of Directors 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 Parent 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 Agent, executed and delivered by Parent or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Convertible Note Indenture" means that certain Indenture dated as of March 1, 2011 between Parent and The Bank of New York Mellon Trust Company, N.A., as trustee, as amended or modified from time to time, in an aggregate original principal amount of \$157,500,000.

"Convertible Notes" means convertible subordinated notes due 2026 issued pursuant to the Convertible Note Indenture in an aggregate original principal amount of \$157,500,000.

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

"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.

"Defaulting Lender" means any Lender that (a) has failed to fund any amounts required to be funded by it under the Agreement within 1 Business Day of the date that it is required to do so under the Agreement (including the failure to make available to Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified the Administrative Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within 1 Business Day after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to Agent, any Co-Collateral Agent or any other Lender any other amount required to be paid by it under the Agreement within 1 Business Day of the date that it is required to do so under the Agreement, unless subject of a good faith dispute, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or

(ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Revolving Loans that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

"Delta Business" means the Delta Business Sub-Segments collectively and taken as a whole.

"Delta Business Sub-Segments" means the collective reference to, and individually any one of, (i) Delta/FOSS, (ii) Frey Scientific, and (iii) Other Science Products.

"Delta/Foss" means the Delta and Refurbishment marketing units that are a sub-segment of the Delta Business that offers an inquiry-based elementary school science curriculum, including instructional and classroom resources and hands-on investigation materials, the Delta Science Module program, the FOSS (Full Option Science System) program and kit refill materials.

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

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

"Dilution" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 12 months, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Borrowers' Accounts during such period, by (b) Borrowers' billings with respect to Accounts during such period.

"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%.

"Disqualified Equity Interests" shall mean any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is

mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date.

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

"Educational Resources Administrator" means the category within the Educational Resources Segment that offers basic classroom supplies, office products, janitorial and sanitation supplies, school equipment, technology products and paper.

"Educational Resources Business" means the Educational Resources Business Segments, collectively and taken as a whole.

"Educational Resources Business Segments" means the collective reference to, and individually any one of, (i) Educational Resources Educator, (ii) Educational Resources Administrator, and (iii) Educational Resources Furniture.

"Educational Resources Educator" means the category within the Educational Resources Segment that offers supplemental learning materials, teaching resources, upper-grade-level art supplies, early childhood products, physical education equipment and special needs equipment and classroom technology.

"Educational Resources Furniture" means the category within the Educational Resources Segment that offers classroom furniture, library furniture, cafeteria furniture, office furniture, fixed furniture such as bleachers and lockers, as well as construction and project management services.

"Eligible Accounts" means those Accounts created by a Borrower in the ordinary course of its business, that arise out of such Borrower's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, that such criteria may be revised from time to time by Co-Collateral Agents in Co-Collateral Agents' Permitted Discretion to address the results of any field examination performed by (or on behalf of) Agent and/or Co-Collateral Agents from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits, unapplied cash, taxes, discounts, credits, allowances, and rebates. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within 90 days of original invoice date or within 60 days of original due date or Accounts with selling terms of more than 60 days (provided, that, during the period commencing on December 1st of each year

through May 31st of the immediately subsequent year, Accounts in an aggregate amount for all such Accounts not to exceed the lesser of (x) 70% of all Accounts outstanding more than 90 days past their original invoice date and (y) \$5,000,000 shall not be ineligible under this clause (a) as a result of being outstanding more than 90 days past original invoice date, so long as such Accounts are not unpaid more than 120 days past their original invoice date),

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

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

(d) 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, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars,

(f) 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 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 (A) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (B) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts (x) with respect to which the applicable Borrower has complied, to the reasonable satisfaction of Co-Collateral Agents, with the Assignment of Claims Act, 31 USC §3727 and (y) in an aggregate amount not to exceed \$2,000,000);

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

(i) Accounts with respect to an Account Debtor whose total obligations owing to Borrowers exceed 10% (such percentage, as applied to a particular Account Debtor, being subject to reduction by Co-Collateral Agents in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, that, in

each case, the amount of Eligible Accounts that are excluded because they exceed the foregoing percentage shall be determined by Co-Collateral Agents based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon the foregoing concentration limit,

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

(k) Accounts, the collection of which, Co-Collateral Agents, in their Permitted Discretion, believes to be doubtful, including by reason of the Account Debtor's financial condition,

(l) Accounts that are not subject to a valid and perfected first priority Agent's Lien, or are subject to a Lien other than the Liens of Agent and those permitted in clauses (a), (b), (c) and (q) of the definition of the term Permitted Liens (but as to Liens referred to in clause (c) only to the extent that Co-Collateral Agents have established a reserve in respect thereof),

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

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

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by Borrowers of the subject contract for goods or services, or

(p) Accounts arising from or in connection with contracts or projects that are subject to a performance or surety bond.

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

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

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

(c) it is not located at one of the locations in the continental United States set forth on Schedule E-1 to the Agreement (or in-transit from one such location to another such location),

(d) it is in-transit to or from a location of the applicable Borrower (other than in-transit from one location set forth on Schedule E-1 to the Agreement to another location set forth on Schedule E-1 to the Agreement); unless such inventory is in transit outside of, but on route to, the United States of America (including its inland waterways), is fully insured and the title documents in respect thereof (x) are negotiable, (y) are in the possession of a Title Document Agent, and (z) have been consigned and issued as follows: "to the order of a Title Document Agent, as agent for secured party, Wells Fargo Capital Finance, LLC, which secured party has a security interest in the goods covered by this document"; provided, that the maximum amount of in-transit inventory not located in the United States of America (including its inland waterways) at any one time included as Eligible Inventory shall not exceed \$2,500,000,

(e) it is located on real property leased by the applicable Borrower, in a contract warehouse or with a processor, in each case, unless a Landlord Reserve is in place for such location or it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

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

(g) it is not subject to a valid and perfected first priority Agent's Lien, or is subject to a Lien other than the Liens of Agent and those permitted in clauses (a), (b), (c), (g), (p) and (q) of the definition of the term Permitted Liens (but as to Liens referred to in clause (c), (g) and (p) only to the extent that Co-Collateral Agents have established a reserve in respect thereof),

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

(i) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in a Borrower's business, bill and hold goods, defective goods, "seconds," or Inventory acquired on consignment; provided, that, Eligible Slow Moving shall not be ineligible under this clause (i) as a result of being slow moving, provided, further, that, if Borrowers have not sold any Inventory of a particular type or category during the then immediately preceding 12 consecutive month period, such type or category of Inventory shall be deemed ineligible as slow moving under this clause (i),

(j) it is subject to third party trademark, or other intellectual property, licensing or proprietary rights, unless Co-Collateral Agents are satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default (without Agent

infringing any rights of, or incurring any liabilities to, any licensor or owner of such third party rights) despite such third party rights, or

(k) it is located at any site if the aggregate book value of Inventory at such location is less than \$100,000.

"Eligible Slow Moving Inventory" means Inventory of the type or category that Borrowers then have a supply of 52 weeks or more (based on sales over the then preceding 12 consecutive month period) unless Borrowers have not sold any Inventory of such type or category during the then immediately preceding 12 consecutive month period.

"Eligible Transferee" means (a) any Lender (other than a Defaulting Lender), any Affiliate of any Lender and any Related Fund of any Lender; and (b) (i) a commercial bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (ii) a savings and loan association or savings bank organized under the laws of the United States or any state thereof, and having total assets in excess of \$1,000,000,000; (iii) a commercial bank organized under the laws of any other country or a political subdivision thereof; provided that (A) (x) such bank is acting through a branch or agency located in the United States or (y) such bank is organized under the laws of a country that is a member of the Organization for Economic Cooperation and Development or a political subdivision of such country, and (B) such bank has total assets in excess of \$1,000,000,000; (c) any other entity (other than a natural person) that is an "accredited investor" (as defined in Regulation D under the Securities Act) that extends credit or buys loans as one of its businesses including insurance companies, investment or mutual funds and lease financing companies, and having total assets in excess of \$1,000,000,000; (d) if no Event of Default exists, any Person (other than any natural Person); and (e) during the continuation of an Event of Default, any other Person approved by Agent; provided, that, except in connection with the exercise of any purchase right under Section 10 of the Split Lien Intercreditor Agreement, "Eligible Transferee" shall exclude any holder of any Indebtedness arising under the Split Lien Documents.

"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 Parent, any Subsidiary of Parent, 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 Parent, any Subsidiary of Parent, 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 Parent or 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).

"Equity Interest" means, with respect to a Person, all of the shares, options, warrants, interests, participations, or other equivalents (regardless of how designated) of or in such Person, whether voting or nonvoting, including capital stock (or other ownership or profit interests or units), 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).

"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 Parent 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 Parent 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 Parent 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 of the IRC, any Person subject to ERISA that is a party to an arrangement with Parent or any of its Subsidiaries and whose employees are aggregated with the employees of Parent or its Subsidiaries under IRC Section 414(o).

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

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

"Excluded Taxes" means (i) any tax imposed on the net income or net profits of any Lender or any Participant (including any branch profits taxes), in each case imposed by the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender or such Participant is organized or the jurisdiction (or by any political subdivision or taxing authority thereof) in which such Lender's or such Participant's principal office is located in each case as a result of a present or former connection between such Lender or such Participant and the jurisdiction or taxing authority imposing the tax (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under the Agreement or



any other Loan Document); (ii) taxes resulting from a Lender's or a Participant's failure to comply with the requirements of Section 16.2 of the Agreement, and (iii) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), except that Taxes shall include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16.1 of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority.

"Existing Agent" means Wells Fargo Capital Finance, LLC in its capacity as the administrative agent to the Existing Lenders.

"Existing Bank Product Obligations" means "Bank Product Obligations" as defined in the Existing Loan Agreement.

"Existing Lenders" means the financial institutions party to the Existing Loan Agreement, and each of their respective successors and assigns.

"Existing Letter of Credit" has the meaning set forth in Section 2.11(n).

"Existing Loan Agreement" means that certain Credit Agreement dated as of May 22, 2012 by and among Existing Agent, as Administrative Agent, Existing Agent and General Electric Capital Corporation as Co-Collateral Agents, the lenders party thereto and Borrowers as amended from time to time.

"Existing Loan Documents" all documents, agreements and orders that evidence or govern the Existing Secured Obligations, including, without limitation, the items described on Schedule E-2, in each case, as the same has been amended, restated, supplemented or otherwise modified from time to time.

"Existing Secured Obligations" means all outstanding principal, accrued interest, accrued fees and expenses and any other indebtedness and amounts owing to Existing Lenders (or the agents therefor) under the Existing Loan Documents and all Existing Bank Product Obligations.

"Existing Split Lien Agent" means the "Term Loan Agent" as defined in the Existing Split Lien Intercreditor Agreement.

"Existing Split Lien Credit Agreement" means that certain Credit Agreement dated as of May 22, 2012, by and among Borrowers, Select Agendas, Corp., Existing Split Lien Agent and the lenders from time to time party thereto, as amended from time to time to the extent permitted under the Existing Split Lien Intercreditor Agreement.

"Existing Split Lien Documents" means the "Term Loan Documents" as defined in the Split Lien Intercreditor Agreement (as in effect on the date hereof).

"Existing Split Lien Indebtedness" means "Term Loan Debt" as defined in the Existing Split Lien Intercreditor Agreement.

"Existing Split Lien Intercreditor Agreement" means that certain Intercreditor Agreement dated as May 22, 2012, between Existing Agent and Existing Split Lien Agent and acknowledged by the Loan Parties, as amended or modified from time to time.

"Existing Split Lien Priority Collateral" means the "Term Loan Priority Collateral" as defined in the Existing Split Lien Intercreditor Agreement.

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

"Extraordinary Receipts" means (a) so long as no Event of Default has occurred and is continuing, proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim, and (b) if an Event of Default has occurred and is continuing, any payments received by Parent or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.4(e)(ii) of the Agreement) consisting of (i) proceeds of judgments, proceeds of settlements, or other consideration of any kind received in connection with any cause of action or claim, (ii) indemnity payments (other than to the extent such indemnity payments are immediately payable to a Person that is not an Affiliate of Parent or any of its Subsidiaries, and (iii) any purchase price adjustment received in connection with any purchase agreement.

"Fee Letter" means that certain fee letter, dated as of even date with the Agreement, between Borrowers and Agent, in form and substance satisfactory to Agent.

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

"Filing Date" has the meaning set forth in the recitals hereto.

"Final Order" means the order of the Bankruptcy Court entered in the Bankruptcy Cases after a final hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which order is in effect and not stayed, in the form attached as Exhibit F-1, modified only to include provisions of the Interim Order that are not to be effective until the entry of the "Final Order" (as defined in the Interim Order).

"Financing Order" means, (i) until the entry of the Final Order, the Interim Order, and (ii) after the entry of the Final Order, the Final Order, together with (a) all non-material amendments, modifications and supplements to such Interim Order or Final Order, as applicable, which are acceptable to Agent in its sole and absolute discretion and (b) all material amendments, modifications and supplements to such Interim Order or Final Order, as applicable, which are acceptable to each Lender.

"Flow of Funds Agreement" means a flow of funds agreement, dated as of even date herewith, in form and substance reasonably satisfactory to Agent, executed and delivered by each Loan Party and Agent.

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

"Frey Scientific" means the marketing unit that is a sub-segment of the Delta Business that offers a line of science supplies and equipment for k-12 classrooms and science labs, as well as lab design services and furniture.

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

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of the Agreement.

"FX and Currency Option Obligations" means any and all obligations of the Borrowers and their Subsidiaries, whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under any and all agreements, devices or arrangements designed to protect any Borrower or any of their Subsidiaries from variations in the comparative value of currencies, including foreign exchange purchase and future purchase transactions, currency options, currency swaps and cross currency rate swaps.

"GECC" means General Electric Capital Corporation, a Delaware corporation.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied.

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

"Governmental Authority" means 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.

"Guarantor" means (a) each Subsidiary of Parent (other than a Borrower) and (b) each other Person that becomes a guarantor of the Obligations after the Closing Date pursuant to Section 5.11 of the Agreement.

"Guaranty and Security Agreement" means a guaranty and security agreement, dated as of even date with the Agreement, in form and substance reasonably satisfactory to Co-Collateral Agents, executed and delivered by each Borrower and each Guarantor to Agent.

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

"Health Business" means a segment of the Accelerated Learning Business that offers physical education and health solutions under the SPARK brand.

"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 Parent or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means any Lender or any of its Affiliates; provided, that no such Person shall constitute a Hedge Provider unless and until (x) in the case of Wells Fargo or its Affiliates, Agent shall have received a Bank Product Provider Agreement from such Person and with respect to the applicable Hedge Agreement prior to the date that is 10 days after the execution and delivery of such Hedge Agreement with Parent or its Subsidiaries, or (y) in the case of any other Person, Agent shall have received a Bank Product Provider Agreement from such Person and with respect to the applicable Hedge Agreement within 10 days after the execution and delivery of such Hedge Agreement with Parent or its Subsidiaries; provided further, that if, at any time, a Lender ceases to be a Lender under the Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Hedge Providers and the obligations with respect to Hedge Agreements entered into with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations.

"Indebtedness" as to any Person means (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 incurred in the ordinary course of business and repayable in accordance with customary trade practices and, for the avoidance of doubt, other than royalty payments payable in the ordinary course of business in respect of non-exclusive licenses), (f) all monetary 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 Disqualified Equity Interests 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; *provided* that reimbursement obligations with respect to Permitted Surety Bonds that have not been drawn shall not constitute Indebtedness. 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 which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation.

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

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

"Indemnified Taxes" means, any Taxes other than Excluded Taxes.

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

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of even date with the Agreement, executed and delivered by Parent, each of its Subsidiaries each of the other Loan Parties, and Agent, the form and substance of which is reasonably satisfactory to Agent.

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 14 days or 1, 2, 3 or 6 months thereafter; *provided*, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end

on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period of a month or greater that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2, 3 or 6 months after the date on which the Interest Period began, as applicable, and (d) Borrowers may not elect an Interest Period which will end after the Maturity Date.

"Interim Order" means the order of the Bankruptcy Court entered in the Bankruptcy Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which order is in effect and not stayed, in the form attached as Exhibit F-1.

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

"Inventory Reserves" means, as of any date of determination, (a) Landlord Reserves, and (b) those reserves that Co-Collateral Agents deem necessary or appropriate, in their Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for slow moving Inventory and Inventory shrinkage) with respect to Eligible Inventory or the Maximum Revolver Amount.

"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, and (b) bona fide accounts receivable arising in the ordinary course of business), or acquisitions of Indebtedness, Equity Interests, 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. The amount of any Investment shall be the original cost of such Investment plus the cost of all additions thereto, without any adjustment for increases or decreases in value, or write-ups, write-downs, or write-offs with respect to such Investment.

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

"ISP" means, with respect to any Letter of Credit, the "International Standby Practices 1998" published by the Institute of International Banking Law & Practice (or such later version thereof as may be in effect at the time of issuance).

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

"Issuing Lender" means WFCF or any other Lender that, at the request of Administrative Borrower and with the consent of Agent, agrees, in such Lender's sole discretion,

to become an Issuing Lender for the purpose of issuing Letters of Credit or Reimbursement Undertakings pursuant to Section 2.11 of the Agreement and Issuing Lender shall be a Lender.

"Landlord Reserve" means, as to each location at which any Loan Party has Inventory or books and records located and as to which a Collateral Access Agreement has not been received by Agent, (x) in the case of real property leased by the applicable Borrower, a reserve in an amount equal to the greater of (a) the number of months' rent for which the landlord will have, under applicable law, a Lien in the Inventory of such Loan Party to secure the payment of rent or other amounts under the lease relative to such location, and (b) 3 months' rent under the lease relative to such location and (y) in the case of any other location, a reserve in an amount determined by Co-Collateral Agents in their Permitted Discretion.

"Lease" means a lease, license, concession, occupancy agreement or other agreement (written or oral, now or at any time in effect) which grants to any Person a possessory interest in, or the right to use, all or any part of a parcel of Real Property.

"Leased Real Property" means any leasehold interest in Real Property of any Loan Party as lessee, sublessee or the like under any Lease.

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

"Lender Group" means each of the Lenders (including Issuing Lender and the Swing Lender), each of the Co-Collateral Agents and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes and insurance premiums) required to be paid by Parent or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) documented out-of-pocket fees or charges paid or incurred by Agent and each Co-Collateral Agent in connection with the Lender Group's transactions with Parent or its Subsidiaries under any of the Loan Documents, including, fees or charges for background checks, OFAC/PEP searches, photocopying, notarization, couriers and messengers, telecommunication, public record searches, filing fees, recording fees, 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 the Agreement or the Fee Letter), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges (as adjusted from time to time) with respect to the disbursement of funds (or the receipt of funds) to or for the account of Borrowers (whether by wire transfer or otherwise), together with any out-of-pocket costs and expenses incurred in connection therewith, (d) customary charges imposed or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable documented out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective

of whether a sale is consummated, (f) field examination, appraisal, and valuation fees and expenses of Agent and each Co-Collateral Agent related to any field examinations, appraisals, or valuation to the extent of the fees and charges (and up to the amount of any limitation) provided in Section 2.10 of the Agreement, (g) Agent's reasonable costs and expenses (including reasonable documented attorneys' fees and expenses) relative to third party claims or any other lawsuit or adverse proceeding paid or incurred, whether in enforcing or defending the Loan Documents or otherwise in connection with the transactions contemplated by the Loan Documents, Agent's Liens in and to the Collateral, or the Lender Group's relationship with Parent or any of its Subsidiaries, (h) Agent's and each Co-Collateral Agent's reasonable documented costs and expenses (including reasonable documented attorneys' fees and due diligence expenses) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating (including reasonable costs and expenses relative to CUSIP, DXSyndicate™, SyndTrak or other communication costs incurred in connection with a syndication of the loan facilities), or amending, waiving, or modifying the Loan Documents, (i) Agent's, each Co-Collateral Agent and each Lender's reasonable documented costs and expenses (including reasonable documented attorneys', accountants', consultants', and other advisors' fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with any of the Bankruptcy Cases or with such other "workout," a "restructuring," or an Insolvency Proceeding concerning Parent or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents), or defending the Loan Documents, irrespective of whether a lawsuit or other adverse proceeding is brought, or in taking any enforcement action or any Remedial Action with respect to the Collateral, including any such costs and expenses incurred in connection with any action to lift the automatic stay of Section 362 of the Bankruptcy Code, or any other action or participation by any member of the Lender Group in the Bankruptcy Cases, including any contested matters or adversary proceedings, to the extent related to any of the foregoing, and (j) the fees, charges, commissions and costs provided for in Section 2.11(j) of the Agreement (including any fronting fees) and all other fees, charges, commissions, costs and expenses for amendments, renewals, extensions, transfers, or drawings from time to time charged by the Underlying Issuer or incurred or charged by Issuing Lender in respect of Letters of Credit and out-of-pocket fees, costs, and expenses charged by the Underlying Issuer or incurred or charged by Issuing Lender in connection with the issuance, amendment, renewal, extension, or transfer of, or drawing under, any Letter of Credit or any demand for payment thereunder.

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

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

"Letter of Credit" means a letter of credit (as that term is defined in the Code) issued by Issuing Lender or a letter of credit (as that term is defined in the Code) issued by Underlying Issuer, as the context requires.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify



that the Letter of Credit Fees and all fees, charges and commissions provided for in Section 2.11(j) of the Agreement (including any fronting fees) will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of the Revolving Lenders in an amount equal to 110% of the then existing Letter of Credit Usage, (b) delivering to Agent documentation executed by all beneficiaries under the Letters of Credit, in form and substance reasonably satisfactory to Agent and Issuing Lender, terminating all of such beneficiaries' rights under the Letters of Credit, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank acceptable to Agent (in its sole discretion) in an amount equal to 110% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit Fee and all fronting fees set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Lender or Underlying Issuer pursuant to a Letter of Credit.

"Letter of Credit Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Letter of Credit Usage on such date.

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

"Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit.

"LIBOR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of the Agreement.

"LIBOR Notice" means a written notice in the form of Exhibit L-1.

"LIBOR Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"LIBOR Rate" means the rate per annum rate appearing on Macro\*World's (www.mworld.com; the "Service") Page BBA LIBOR - USD (or on any successor or substitute page of such Service, or any successor to or substitute for such Service) 2 Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrowers in accordance with the Agreement (and, if any such rate is below zero, the LIBOR Rate shall be deemed to be zero), which determination shall be made by Agent and shall be conclusive in the absence of manifest error.

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

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

"Lien" means any mortgage, deed of trust, pledge, hypothecation, assignment, charge, deposit arrangement, encumbrance, easement, lien (statutory or other), security interest, or other security arrangement and any other preference, priority, or preferential arrangement of any kind or nature whatsoever, including any conditional sale contract or other title retention agreement, the interest of a lessor under a Capital Lease and any synthetic or other financing lease having substantially the same economic effect as any of the foregoing, including all "liens" as defined by Section 101(37) of the Bankruptcy Code.

"Loan" shall mean any Revolving Loan (including any Swing Loan or Extraordinary Advance) made (or to be made) hereunder.

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

"Loan Documents" means the Agreement, the Financing Order, the Control Agreements, the Copyright Security Agreement, any Borrowing Base Certificate, the Fee Letter, the Guaranty and Security Agreement, the Intercompany Subordination Agreement, any Issuer Documents, the Letters of Credit, the Mortgages, the Patent Security Agreement, the Trademark Security Agreement, any note or notes executed by a Borrower in connection with the Agreement and payable to any member of the Lender Group, and any other instrument or agreement entered into, now or in the future, by Parent or any of its Subsidiaries and any member of the Lender Group in connection with the Agreement.

"Loan Party" means any Borrower or any Guarantor.

"Management Incentive Plan" means the management incentive plan proposed by the Loan Parties and in form and substance acceptable to Agent and Required Lenders.

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

"Material Adverse Effect" means (a) a material adverse effect in the business, operations, results of operations, assets, liabilities or financial condition of Parent and its Subsidiaries, taken as a whole, or the Accelerated Learning Business taken as a whole, in each instance except for the filing, commencement and continuation of the Bankruptcy Cases and the events that customarily result from the filing, commencement and continuation of the Bankruptcy Cases (including any litigation resulting therefrom), (b) a material impairment of Parent's and its Subsidiaries' ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral (other than as a result of an action taken or not taken that is solely in the control of Agent), or (c) a material impairment of the enforceability or priority of Agent's Liens with respect to all or a material portion of the Collateral as a result of an action or failure to act on the part of Parent or its Subsidiaries.

"Maturity Date" means June 30, 2013.

"Maximum Revolver Amount" means \$175,000,000, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c) of the Agreement.

"Milestones" has the meaning set forth in Section 5.16.

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

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Parent or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Co-Collateral Agents, that encumber the Real Property Collateral.

"Net Cash Proceeds" means:

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

(b) with respect to the issuance or incurrence of any Indebtedness by Parent or any of its Subsidiaries, or the issuance by Parent or any of its Subsidiaries of any Equity Interests, the aggregate amount of cash received (directly or indirectly) from time to time

(whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of Parent or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses in the Budget related thereto and required to be paid by Parent or such Subsidiary in connection with such issuance or incurrence, (ii) taxes paid or payable to any taxing authorities by Parent or such Subsidiary in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of Parent or any of its Subsidiaries, and are properly attributable to such transaction.

"Net Recovery Percentage" means, as of any date of determination, the percentage of the book value of any category of Borrowers' Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be determined as to each category of Inventory and to be as specified in the most recent appraisal received by Agent from an appraisal company selected by Co-Collateral Agents, it being acknowledged and agreed that such percentages shall, to the extent set forth in such appraisal, vary between the "busy" season (initially, which shall be deemed to be the period commencing on May 1st through September 30 of each year or, thereafter, 30 days prior to the corresponding dates of the "busy" season set forth in any subsequent appraisal) and the "non-busy" season. For avoidance of doubt, Inventory of the type that Borrowers then have a supply of 52 weeks or more and less than 104 weeks (based on sales over the then preceding 12 consecutive month period) shall be considered one category and Inventory of the type that Borrowers then have a supply of more than 104 weeks (based on sales over the then preceding 12 consecutive month period) shall be considered a separate category.

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

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

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

Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations, irrespective of whether contingent) owing by any Borrower or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of an Underlying Letters of Credit, and (c) all Bank Product Obligations. Without limiting the generality of the foregoing, the Obligations of Borrowers under the Loan Documents include the obligation to pay (i) the principal of the Revolving Loans, (ii) interest accrued on the Revolving Loans, (iii) the amount necessary to reimburse Issuing Lender for amounts paid or payable pursuant to Letters of Credit or Reimbursement Undertakings and the amount necessary to reimburse Underlying Issuer for amounts paid or payable pursuant to Letters of Credit, (iv) Letter of Credit commissions, charges, expenses, and fees, (v) Lender Group Expenses, (vi) fees payable under the Agreement or any of the other Loan Documents, and (vii) indemnities and other amounts payable by any Loan Party under any Loan Document. Any reference in the 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.

"Other Science Projects" means the marketing units that are sub-segments of the Delta Business that offer grade 6-12 learning systems that integrate textbooks, equipment and technology under the CPO Science brand, a supplementary science curriculum under the NEO/SCI brand and SCIS brands, and a math curriculum, supplementary products and manipulatives primarily under the ThinkMath brand.

"Other Statutory Liabilities" means accrued and unpaid statutory liabilities of the Loan Parties which may result in claims that have lien priority or priority of payment over all or any portion of the Obligations, are a statutory trust and/or which are legally required to be paid prior to the repayment in full of such Obligations, other than the amount of those liabilities included in the Carveout.

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

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

"Parent" has the meaning specified therefor in the preamble to the Agreement.

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

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

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

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

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

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete or no longer used or useful in the ordinary course of business and leases or subleases of Real Property not useful in the conduct of the business of Parent and its Subsidiaries,

(b) sales of Inventory to buyers in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) any sale or other disposition described in Schedule 5.16, and

(f) the making of Permitted Investments.

"Permitted Indebtedness" means, without duplication:

(a) Indebtedness evidenced by the Agreement or the other Loan Documents, as well as Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit,

(b) Existing Secured Obligations, including any Indebtedness reinstated by the Bankruptcy Court and constituting Reinstated Existing Secured Obligations,

(c) Indebtedness set forth on Schedule 4.14 to the Agreement,

(d) Permitted Purchase Money Indebtedness,

(e) endorsement of instruments or other payment items for deposit,

(f) Permitted Surety Bonds in an aggregate amount not to exceed \$30,000,000,

(g) Indebtedness permitted to be incurred in accordance with the Financing Order,

(h) the incurrence by Parent or its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with Parent's and its Subsidiaries' operations and not for speculative purposes,

(i) Indebtedness incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or Cash Management Services,

(j) Indebtedness composing Permitted Investments,

(k) Indebtedness outstanding under the Existing Split Lien Documents,

(l) Indebtedness outstanding under the Split Lien Documents (and any refinancing of such Indebtedness to the extent such refinancing is permitted by, and subject to the terms of, the Split Lien Intercreditor Agreement as in effect on the date hereof) in an aggregate principal amount not to exceed \$142,054,001.06 (plus interest, fees and expenses paid in kind),

(m) Indebtedness under the Convertible Notes in an aggregate principal amount not to exceed \$157,500,000 (plus accreted principal), and

(n) accrual of interest, accretion or amortization of original issue discount, or the payment of interest in kind, in each case, on Indebtedness that otherwise constitutes Permitted Indebtedness.

"Permitted Intercompany Advances" means loans and other Investments made by (a) a Loan Party to another Loan Party other than Parent, (b) a Subsidiary of Parent that is not a Loan Party to another Subsidiary of Parent that is not a Loan Party, and (c) a Subsidiary of Parent that is not a Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement.

"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,

(d) deposits of cash outstanding on the Filing Date made in the ordinary course of business to secure performance of operating leases,

(e) Permitted Intercompany Advances,

(f) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1 to the Agreement, and

(g) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or

any of its Subsidiaries as a result of Insolvency Proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries.

"Permitted Liens" means

- (a) Liens granted to, or for the benefit of, Agent 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 Agent'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 8.3 of the Agreement,
- (d) Liens set forth on Schedule P-2 to the Agreement; provided, that to qualify as a Permitted Lien, any such Lien described on Schedule P-2 to the Agreement 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 and the proceeds thereof, and (ii) such Lien only secures the Indebtedness that was incurred to acquire the asset purchased or acquired,
- (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 Parent's and its Subsidiaries' obligations in connection with worker's compensation or other unemployment insurance,
- (i) Liens on amounts deposited to secure Parent's and its Subsidiaries' obligations 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 Parent's and its Subsidiaries' reimbursement obligations with respect to Permitted Surety Bonds permitted pursuant to clause (f) of the definition of Permitted Indebtedness,
- (k) with respect to any Real Property, easements, rights of way, and zoning restrictions that do not materially interfere with or impair the use or operation thereof,



(l) Liens granted or authorized by the Financing Orders, including, without limitation, replacement Liens granted to Existing Agent,

(m) Liens on Collateral securing the Existing Split Lien Indebtedness,

(n) Liens on Collateral securing the Indebtedness under the Split Lien Documents subject to the Split Lien Intercreditor Agreement,

(o) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business and in existence on the Filing Date,

(p) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of Deposit Accounts that are subject to Control Agreements in the ordinary course of business,

(q) Liens in favor of customs and revenue authorities arising on or prior to the Filing Date as a matter of law to secure payment of customs duties not yet delinquent in connection with the importation of goods, and

(r) Liens granted to, or for the benefit of, Agent to secure the Existing Secured Obligations.

"Permitted PMM/Capital Lease Debt" means Capitalized Lease Obligations and purchase money Indebtedness with respect to fixed assets (i) outstanding on the Closing Date and set forth on Schedule 4.14 hereof and described as such on such Schedule and (ii) incurred after the Closing Date in an aggregate principal amount for all such Capitalized Lease Obligations and purchase money Indebtedness not to exceed \$500,000 outstanding at any time, provided that such Capitalized Lease Obligations and purchase money Indebtedness are entered into in connection with, and at the time of or no later than 20 days after, the acquisition by the Borrowers of equipment useful and used in the ordinary course of the Borrowers' business and the principal amount of such Capitalized Lease Obligations and purchase money Indebtedness when incurred does not exceed the purchase price of the property financed, and no such Capitalized Lease Obligations and purchase money Indebtedness shall be refinanced for a principal amount in excess of the principal amount refinanced.

"Permitted Priority Liens" means all Permitted Liens permitted to have priority over the Liens in favor of Agent and Lenders, solely to the extent that such Liens are valid, perfected and non-avoidable as of the Filing Date, subject to the terms of the Financing Order and otherwise agreed to by Agent.

"Permitted Protest" means the right of Parent or any of its 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 Parent's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Parent or its Subsidiary, as applicable, in good faith, and

(c) Agent is satisfied that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred after the Closing Date and at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof, in an aggregate principal amount outstanding at any one time not in excess of \$500,000.

"Permitted Senior Liens" means Permitted Liens which are non-consensual Permitted Liens, permitted purchase money Liens, the interests of lessors under Capital Leases, and, solely with respect to the Split Lien Priority Collateral, Liens securing the Indebtedness under the Split Lien Documents.

"Permitted Surety Bonds" means unsecured guarantees and reimbursement obligations incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations.

"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.

"Planner Business" means the business unit comprised of Premier Agendas, Inc., Premier School Agendas, Ltd. and Select Agendas, Corp.

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

"Product Development Expense" means, for any period, the capitalized cash investment on product development for such period.

"Professional Fee Line Items" has the meaning specified therefor in Section 6.15 of the Agreement.

"Projected Information" means (i) the projected weekly operating cash receipts for each week, (ii) the projected weekly disbursements for each week (iii) the projected net weekly cash flow for each week, (iv) the projected weekly net sales for each week, (v) the projected Availability for each week, (v) the projected aggregate principal amount of Obligations outstanding for each week and (vi) such other information that Agent may request.

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

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

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

(b) with respect to a Lender's obligation to participate in the Letters of Credit, with respect to such Lender's obligation to reimburse Issuing Lender, and with respect to such Lender's right to receive payments of Letter of Credit fees, and with respect to all other computations and other matters related to the Letters of Credit, the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders; provided, that if all of the Revolving Loans have been repaid in full and all Revolver Commitments have been terminated, but Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined as if the Revolver Commitments had not been terminated and based upon the Revolver Commitments as they existed immediately prior to their termination, and

(c) [intentionally omitted]

(d) with respect to all other matters and for all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), the percentage obtained by dividing (i) the Revolving Loan Exposure of such Lender by (ii) the aggregate Revolving Loan Exposure of all Lenders, in any such case as the applicable percentage may be adjusted by assignments permitted pursuant to Section 13.1; provided, that if all of the Loans have been repaid in full, all Letters of Credit have been made the subject of Letter of Credit Collateralization, and all Commitments have been terminated, Pro Rata Share under this clause shall be determined as if the Revolving Loan Exposures had not been repaid, collateralized, or terminated and shall be based upon the Revolving Loan Exposures as they existed immediately prior to their repayment, collateralization, or termination.

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

"Public Lender" has the meaning specified therefor in Section 17.9(c) of the Agreement.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of Parent and its Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account or Securities Account is the subject of a Control Agreement and is maintained by a branch office of the bank or securities intermediary located within the United States.

"Qualified Equity Interest" means and refers to any Equity Interests issued by Parent (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Rate Hedging Obligations" means any and all obligations of the Borrowers and their Subsidiaries under (a) any and all agreements, devices or arrangements designed to protect any Borrowers or any of their Subsidiaries from the fluctuations of interest rates, including interest rate exchange agreements, interest rate cap or collar protection agreements, and interest rate options, puts and warrants, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any of the foregoing.

"Reading Business" means the literacy and intervention division of the Accelerated Learning Business.

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

"Real Property Collateral" means the Real Property identified on Schedule R-1 to the Agreement and any Real Property hereafter acquired by Parent or its Subsidiaries.

"Receivable Reserves" means, as of any date of determination, those reserves that Co-Collateral Agents deem necessary or appropriate, in their Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves for rebates, discounts, warranty claims, and returns) with respect to the Eligible Accounts or the Maximum Revolver Amount.

"Reconcilable Inclusion" means, with respect to the Accelerated Learning Business and the Planner Business, any inclusion within the Accelerated Learning Business or the Planner Business, respectively, of contracts, rights or other assets that (x) prior to such inclusion, were included in a different Business Segment, or (y) in the case of contracts, rights or other assets not previously included in a different Business Segment, are not consistent with the then-existing other contracts, rights and other assets of the Accelerated Learning Business or the Planner Business, respectively.

"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 the Lenders,

(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 Group 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.

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

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

"Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(a) of the Agreement.

"Reinstated Existing Secured Obligations" means any Existing Secured Obligations constituting Avoided Payments, to the extent such obligations have been reinstated, in each case, pursuant to, and subject to the requirements and terms of the Bankruptcy Court.

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

"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.

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

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

"Required Lenders" means, at any time, Lenders having or holding more than 50% of the sum of the aggregate Revolving Loan Exposure of all Lenders; provided, that (i) the Revolving Loan Exposure of any Defaulting Lender shall be disregarded in the determination of the Required Lenders, and (ii) at any time there are 2 or more Lenders, "Required Lenders" must include at least 2 Lenders (who are not Affiliates of one another).

"Required Prepayment Date" means the earlier of (i) the date of a closing of a sale of all or substantially all of the Loan Parties' assets pursuant to Section 363 of the Bankruptcy Code or (ii) the effective date of a plan in any of the Bankruptcy Cases.

"Reserves" means, as of any date of determination, those reserves (other than the Availability Reserve, Receivable Reserves, Bank Product Reserves, and Inventory Reserves) that Co-Collateral Agents deem necessary or appropriate, in their Permitted Discretion and subject to Section 2.1(c), to establish and maintain (including reserves with respect to (a) sums that Parent or its Subsidiaries are required to pay under any Section of the Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay, and (b) amounts owing by Parent or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien), which Lien or trust, in the Permitted Discretion of Co-Collateral Agents likely would be pari passu with or have a priority superior to the Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for ad valorem, excise, sales, or other taxes where given priority under applicable law) in and to such item of the Collateral) with respect to the Borrowing Base or the Maximum Revolver Amount.

"Restricted Payment" means to (a) declare or pay any dividend or make any other payment or distribution, directly or indirectly, on account of Equity Interests issued by Parent (including any payment in connection with any merger or consolidation involving Parent) or to the direct or indirect holders of Equity Interests issued by Parent in their capacity as such (other than dividends or distributions payable in Qualified Equity Interests issued by Parent, or (b) purchase, redeem, make any sinking fund or similar payment, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving Parent) any Equity Interests issued by Parent, (c) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of Parent now or hereafter outstanding, and (d) make, or cause or suffer to permit any of Parent's Subsidiaries to make, any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Indebtedness.

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

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

"Revolving Lender" means a Lender that has a Revolver Commitment or that has an outstanding Revolving Loan.

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

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

"Rolling Two Week Test Period" has the meaning set forth in Section 6.15 of this Agreement.

"Sale Motion" has the meaning set forth in the Asset Purchase Agreement.

"Sale Order" has the meaning set forth in the Asset Purchase Agreement.

"Sale/Leaseback Liabilities" means any amount or liability in respect of sale/leaseback or analogous transactions that is or is required under GAAP to be shown on the consolidated balance sheet of the Borrowers and their consolidated Subsidiaries.

"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.

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

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

"Single Test Week" has the meaning set forth in Section 6.15 of this Agreement.

"Slow Moving Cap" means, initially, \$5,000,000 as of the Closing Date and shall reduce as of the last day of each month thereafter by \$138,889 .

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

"Split Lien Agent" means the "Term Loan Agent" as defined in the Split Lien Intercreditor Agreement.

"Split Lien Credit Agreement" means that certain Credit Agreement dated as of the date hereof among Borrowers, Select Agendas, Corp., Split Lien Agent and the lenders from time to time party thereto, as amended from time to time to the extent permitted under the Split Lien Intercreditor Agreement.

"Split Lien Documents" means the "Term Loan Documents" as defined in the Split Lien Intercreditor Agreement (as in effect on the date hereof).

"Split Lien Indebtedness" means the Indebtedness under the Split Lien Credit Agreement and the Prepetition Term Loan Documents (as defined in the Split Lien Credit Agreement as in effect on the date hereof).

"Split Lien Intercreditor Agreement" means that certain Intercreditor Agreement dated as of the date hereof between Agent and Split Lien Agent and acknowledged by the Loan Parties, as amended or modified from time to time.

"Split Lien Priority Collateral" means the "Term Loan Priority Collateral" as defined in the Split Lien Intercreditor Agreement.

"Split Lien Termination Date" means the date of the termination of all commitments to lend under the Split Lien Credit Agreement during the existence of a "Termination Date" as defined in the Split Lien Credit Agreement.



"Subordinated Indebtedness" means any unsecured Indebtedness of Parent or its Subsidiaries incurred from time to time that is subordinated in right of payment to the Obligations and that (a) is only guaranteed by the Guarantors, (b) is not subject to scheduled amortization, redemption, sinking fund or similar payment and does not have a final maturity, in each case, on or before the date that is six months after the Maturity Date, (c) does not include any financial covenants or any covenant or agreement that is more restrictive or onerous on any Loan Party in any material respect than any comparable covenant in the Agreement, and (iv) contains customary subordination (including customary payment blocks during a payment default under any "senior debt" designated thereunder) and turnover provisions and shall be limited to cross-payment default and cross-acceleration to other "senior debt" designated thereunder.

"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 Equity Interests having ordinary voting power to elect a majority of the Board of Directors of such corporation, partnership, limited liability company, or other entity.

"Swing Lender" means WFCF or any other Lender that, at the request of Administrative Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of the Agreement.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"Swing Loan Exposure" means, as of any date of determination with respect to any Lender, such Lender's Pro Rata Share of the Swing Loans on such date.

"Taxes" means any 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, and all interest, penalties or similar liabilities with respect thereto.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Test Period" means the Single Test Week and the Rolling Two Week Test Period.

"Title Document Agent" means UPS Supply Chain Solutions, Inc. and any other Person selected by Borrower Representative after written notice by Borrower Representative to Agent who is reasonably acceptable to Agent to receive and retain possession of negotiable documents (as defined in Section 7-104 of the UCC) issued for any Inventory or other property of Borrowers in accordance with a Title Document Agency Agreement, such receipt and retention of possession being for the purpose of more fully perfecting and preserving Agent's security interests in such negotiable documents and the property represented thereby. For avoidance of doubt, no Person shall be a Title Document Agent unless such Person has executed and delivered a Title Document Agency Agreement.

"Title Document Agency Agreement" means an agreement among a Borrower, a Title Document Agent, and Agent, in form and substance acceptable to Agent.

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

"UCP 600" means the rules of the Uniform Customs and Practice for Documentary Credits, as most recently published by the International Chamber of Commerce and in effect as of July 1, 2007 (or such later version thereof as may be in effect at the time of issuance).

"Underlying Issuer" means Wells Fargo or one of its Affiliates.

"Underlying Letter of Credit" means a Letter of Credit that has been issued by an Underlying Issuer.

"United States" means the United States of America.

"Unused Line Fee" has the meaning specified therefor in Section 2.10(b) of the Agreement.

"Variance Report" means a weekly variance report to be provided by Borrowers to Agent within three Business Days after the end of each fiscal week reflecting actual cash receipts and disbursements for (i) the prior fiscal week, (ii) the period from the beginning of the fiscal month which includes such fiscal week to the end of such fiscal week, (iii) the applicable Test Period of the Administrative Borrower, and (iv) the period from the beginning of the fiscal week ending February 2, 2013 to the end of such Test Period, in each case, reflecting the amount variance and, in the case of clause (iii), percentage variance of actual receipts and disbursements (on a line item basis) from those receipts and disbursements reflected in the most recently delivered thirteen-week cash flow forecast in the Budget for the corresponding periods (or, in the case of clause (iv) and with respect to past periods that are not covered in the most recently delivered thirteen-week cash flow forecast in the Budget, the latest thirteen-week cash flow forecast in the Budget that covers any such past period), an explanation of the reason for any such variance and compliance or non-compliance with the requirements set forth in Section 6.15.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of the Agreement.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"WFCF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

### Schedule 3.1

The obligation of each Lender to make its initial extension of credit provided for in the Agreement is subject to the fulfillment, to the satisfaction of each Lender (the making of such initial extension of credit by any Lender being conclusively deemed to be its satisfaction or waiver of the following), of each of the following conditions precedent:

- (a) the Closing Date shall occur on or before January 29, 2013;
- (b) Agent shall have received a letter duly executed by each Loan Party authorizing Agent to file appropriate financing statements in such office or offices as may be necessary or, in the opinion of Agent, desirable to perfect the security interests to be created by the Loan Documents;
- (c) Agent shall have received evidence that appropriate financing statements have been duly filed in such office or offices as may be necessary or, in the opinion of Agent, desirable to perfect the Agent's Liens in and to the Collateral, and Agent shall have received searches reflecting the filing of all such financing statements;
- (d) Agent shall have received each of the following documents, in form and substance satisfactory to Co-Collateral Agents, duly executed and delivered, and each such document shall be in full force and effect:
  - (i) the Fee Letter,
  - (ii) the Guaranty and Security Agreement,
  - (iii) the Reaffirmation of Loan Documents with respect to the Existing Loan Documents,
  - (iv) the Split Lien Intercreditor Agreement.
- (e) Agent shall have received a certificate from the Secretary of each Loan Party (i) attesting to the resolutions of such Loan Party's board of directors authorizing its execution, delivery, and performance of the Loan Documents to which it is a party, (ii) authorizing specific officers of such Loan Party to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of such Loan Party;
- (f) Agent shall have received copies of each Loan Party's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary of such Loan Party;
- (g) Agent shall have received an opinion of the Loan Parties' counsel in form and substance satisfactory to Co-Collateral Agents;
- (h) Agent shall have received a set of Projections of Borrowers for the 13-week period following the Closing Date (on a week by week basis), in form and substance (including as to scope and underlying assumptions) satisfactory to Co-Collateral Agents;

(i) Agent shall have received the Budget setting forth the Projected Information of Loan Parties for the 13-week period following the Closing Date, in form and substance (including as to scope and underlying assumptions) satisfactory to Agent;

(j) Borrowers shall have paid all Lender Group Expenses incurred in connection with the transactions evidenced by the Agreement, the Existing Credit Agreement, the other Loan Documents and the Existing Loan Documents;

(k) Agent shall have received documentation evidencing the post-Filing Date Split Lien Indebtedness, all in form and substance reasonably satisfactory to Co-Collateral Agents, and delivery of the Split Lien Intercreditor Agreement, in form and substance reasonably satisfactory to Co-Collateral Agents;

(l) Parent 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 Parent or its Subsidiaries of the Loan Documents or with the consummation of the transactions contemplated thereby;

(m) The Borrowers shall have entered into the Split Lien Credit Agreement, in form and substance satisfactory to Co-Collateral Agents, the Split Lien Credit Agreement shall be unmodified and in full force and effect, and the Borrowers shall not be in default thereunder;

(n) The Bankruptcy Cases shall have been commenced in the Bankruptcy Court and all "first day orders" and all related pleadings to be entered at or promptly following the commencement of the Bankruptcy Cases have been provided in advance to Agent in form and substance satisfactory to Agent in its sole discretion;

(o) Agent shall have received evidence that Borrowers have received proceeds under the Split Lien Credit Agreement in an aggregate principal amount of not less than \$15,000,000; and

(p) all other documents and legal matters in connection with the transactions contemplated by the Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Co-Collateral Agents.

### Schedule 5.1

Deliver to Agent (and if so requested by Agent, with copies for each Lender) each of the financial statements, reports, or other items set forth below at the following times in form satisfactory to Co-Collateral Agents:

as soon as available, but in any event within 30 days (45 days in the case of a month that is the end of one of Parent's fiscal quarters) after the end of each month during each of Parent's fiscal years,	(a) an unaudited consolidated and consolidating balance sheet, income statement, statement of cash flow, and statement of shareholder's equity covering Parent's and its Subsidiaries' and Business Segment Financial Statements operations during such period and compared to the prior period and plan, together with a corresponding discussion and analysis of results from management,  (b) a Compliance Certificate along with the underlying calculations, including the calculations to arrive at EBITDA to the extent applicable, and  (c) an updated six-month consolidated balance sheet, income statement and statement of cash flow of the Administrative Borrower and its Subsidiaries and income statements by Business Segment for the succeeding six-month period in form and substance satisfactory to the Agent, in its sole discretion.
as soon as available, but in any event within 90 days after the end of each of Parent's fiscal years,	(d) consolidated and consolidating financial statements of Parent and its Subsidiaries for each such fiscal year, audited by independent certified public accountants reasonably acceptable to Agent and certified, without any qualifications (including any (A) "going concern" or like qualification or exception, (B) qualification or exception as to the scope of such audit, or (C) 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, the effect of which would be to cause any noncompliance with the provisions of <u>Section 7</u> of the Agreement), 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 shareholder's equity, and, if prepared, such accountants' letter to management),  (e) a Compliance Certificate along with the underlying calculations, including the calculations to arrive at EBITDA to the extent applicable, and  (f) a detailed calculation of Excess Cash Flow.
as soon as available, but in any event no later than May 30 of each of Parent's fiscal years,	(g) copies of Parent's Projections, in form and substance (including as to scope and underlying assumptions) satisfactory to Agent, in its Permitted Discretion, for the forthcoming fiscal year, month by month, certified by the chief financial officer of Parent as being such officer's good faith estimate of the financial performance of Parent (including each of the Business Segments) during the period covered thereby.
if and when filed or	(h) Form 10-Q quarterly reports, Form 10-K annual reports, and Form 8-K

provided by any Loan Party,	<p>current reports,</p> <p>(i) any other filings made by Parent with the SEC,</p> <p>(j) any other information that is provided by Parent to its shareholders or bondholders generally,</p> <p>(k) any other financial information or reports, or any written summary or analyses from Borrowers' Chief Restructuring Officer, provided by any Loan Party or the Chief Restructuring Officer to Split Lien Agent, and</p> <p>(l) copies of all monthly reports, projections or other information with respect to any Loan Party's business or financial condition or prospects, as well as all pleadings, motions, application and judicial information filed by or on behalf of any Loan Party with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any) or the Committee, at the time such document is filed or delivered, as applicable.</p>
promptly, but in any event within 5 days after Parent has knowledge of any event or condition that constitutes a Default or an Event of Default,	(m) notice of such event or condition and a statement of the curative action that Borrowers propose to take with respect thereto.
promptly after the commencement thereof, but in any event within 5 days after the service of process with respect thereto on Parent or any of its Subsidiaries,	(n) notice of all actions, suits, or proceedings brought by or against Parent or any of its Subsidiaries before any Governmental Authority which reasonably could be expected to result in a Material Adverse Effect.
upon the request of Agent,	<p>(o) monthly, at reasonable times, confirmation of availability for, and arrange for, the chief executive officer, chief financial officer and chief restructuring officer and other members of management of Borrowers to participate on a call with the Agent and Lenders to discuss matters relating to any Loan Party, and</p> <p>(p) any other information reasonably requested relating to the financial condition of Parent or its Subsidiaries,</p>

as soon as available, but in any event within five Business Days prior to the beginning of each month,	(q) an updated Budget for the succeeding thirteen-week period.
as soon as available, but in any event within the third Business Day following the end of each week,	(r) a Variance Report, in form and substance satisfactory to Agent in its sole discretion.
as soon as possible, but in any event within five Business Days after the Closing Date,	<p>(s) a list describing (i) any actual or threatened termination, cancellation or limitation of, or modification to or change in, the business relationship, or any supply, sales or other agreement between (A) any Loan Party, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, or (B) any Loan Party, on the one hand, and any supplier and any group thereof, on the other hand, whose agreements with any Loan Party are individually or in the aggregate material to the business or operations of such Loan Party, and</p> <p>(t) a list describing the amount of revenues or purchases of the Loan Parties from such customer and/or supplier in the prior fiscal year.</p>
as soon as possible, but in any event within one Business Day after any Loan Party's knowledge of any such actual or threatened termination, cancellation, limitation, modification or change,	(u) a notice to Agent describing the same and the amount of revenues or purchases of the Loan Parties from such customer and/or supplier in the prior fiscal year.

### Schedule 5.2

Provide Co-Collateral Agents (and if so requested by Agent, with copies for each Lender) with each of the documents set forth below at the following times in form satisfactory to Co-Collateral Agents:

Weekly (no later than one Business Day after the end of each week)	<p>(a) a Borrowing Base Certificate,</p> <p>(b) a detailed aging, by total, of Borrowers' Accounts, together with a reconciliation and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Parent has implemented electronic reporting),</p> <p>(c) a detailed calculation of those Accounts that are not eligible for the Borrowing Base, if Parent has not implemented electronic reporting,</p> <p>(d) a detailed Inventory system/perpetual report together with a reconciliation to Borrowers' general ledger accounts (delivered electronically in an acceptable format, if Parent has implemented electronic reporting), a detailed calculation of all slow moving inventory (calculated in a manner acceptable to Agent), and a listing of all inventory locations including the amount of billable projects,</p> <p>(e) a detailed calculation of Inventory categories that are not eligible for the Borrowing Base, if Parent has not implemented electronic reporting,</p> <p>(f) a summary aging, by vendor, of Parent's and its Subsidiaries' accounts payable and any book overdraft (delivered electronically in an acceptable format, if Parent has implemented electronic reporting) and an aging, by vendor, of any held checks,</p> <p>(g) a detailed report regarding Parent's and its Subsidiaries' cash and Cash Equivalents, including an indication of which amounts constitute Qualified Cash,</p> <p>(h) a weekly Account roll-forward with supporting details supplied from sales journals, collection journals, credit registers and any other records, in a format acceptable to Agent in its discretion, tied to the beginning and ending account receivable balances of Borrowers' general ledger;</p> <p>(i) Inventory system/perpetual reports specifying the cost and the wholesale market value of Parent's and its Subsidiaries' Inventory, by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Parent has implemented electronic reporting);</p> <p>(j) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Parent's and its Subsidiaries' Accounts;</p>
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Monthly (no later than the 30th day after the end of each month)	<p>(l) a reconciliation of Accounts, trade accounts payable, and Inventory of Borrowers' general ledger accounts to its monthly financial statements including any book reserves related to each category; and</p> <p>(m) a detailed list of all Loan Parties' outstanding surety bonds, with a description of each bond and related project and a schedule of all Accounts relating to such bonds.</p>
Quarterly	(n) a report regarding Parent's and its Subsidiaries' accrued, but unpaid, <i>ad valorem</i> taxes.
Annually	(o) a detailed list of Parent's and its Subsidiaries' customers, with address and contact information.
Upon request by Agent	<p>(p) 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 Agent, from time to time.</p> <p>(q) copies of purchase orders and invoices for Inventory acquired by Parent or its Subsidiaries, and</p> <p>(r) such other reports as to the Collateral or the financial condition of Parent and its Subsidiaries, as either Co-Collateral Agent may reasonably request.</p>

## **Schedule 5.16**

### **Milestones**

#### **Milestone**

1. On or before the Filing Date (or such later date as Agent shall agree in its discretion), Sellers and Purchaser shall have entered into the Asset Purchase Agreement, which shall be in form and substance acceptable to Agent and Co-Collateral Agents.
2. On or before the Filing Date (or such later date as Agent shall agree in its discretion), Sellers shall have filed the Bankruptcy Cases in the Bankruptcy Court.
3. On or before the Filing Date (or such later date as Agent shall agree in its discretion), Sellers shall have filed the Sale Motion seeking the Bankruptcy Court's approval of the Bidding Procedures Order and the Sale Order and appropriate supporting declarations, in each case, in form and substance acceptable to Agent and Co-Collateral Agents.
4. On or before March 29, 2013 (or such later date as Lenders shall agree), Sellers shall have commenced the Auction (as defined in the Asset Purchase Agreement) if any other Qualified Bid (as defined in the Asset Purchase Agreement) is submitted prior to the Bid Deadline (the "Auction Deadline").
5. On or before March 31, 2013 (or such later date as Lenders shall agree), the Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to Agent, Co-Collateral Agents and Required Lenders.
6. On or before April 15, 2013 (or such later date as Lenders shall agree), the APA Closing Date shall have occurred.

As used herein, the following terms shall have the respective meanings given to them below:

**"Bid Deadline"** shall mean the deadline to submit Qualified Bids.

**"Purchaser"** shall mean Bayside School Specialty, LLC, a Delaware limited liability company.

**"Qualified Bid"** shall have the meaning set forth in the Asset Purchase Agreement

**"Sellers"** shall mean Parent and its Subsidiaries party to the Asset Purchase Agreement.

**EXHIBIT B**

**Bayside DIP Credit Agreement**

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SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT

Dated as of January [ ], 2013

among

SCHOOL SPECIALTY, INC.,  
CLASSROOMDIRECT.COM, LLC,  
DELTA EDUCATION, LLC,  
SPORTIME, LLC,  
CHILDCRAFT EDUCATION CORP.,  
BIRD-IN-HAND WOODWORKS, INC.,  
CALIFONE INTERNATIONAL, INC.,

and

PREMIER AGENDAS, INC.,

as Borrowers,

SELECT AGENDAS, CORP.,

FREY SCIENTIFIC, INC.,

and

SAX ARTS & CRAFTS, INC.,  
as Guarantors,

THE LENDERS,  
as defined herein,

and

BAYSIDE FINANCE, LLC,  
as Administrative Agent and as Collateral Agent

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**SENIOR SECURED SUPER PRIORITY DEBTOR-IN-POSSESSION  
CREDIT AGREEMENT**

This Senior Secured Super Priority Debtor-in-Possession Credit Agreement is dated as of January [ ], 2013, and is entered into by and among SCHOOL SPECIALTY, INC., a Wisconsin corporation ("School Specialty" or the "Administrative Borrower"), each of ClassroomDirect.com, LLC, a Delaware limited liability company, Delta Education, LLC, a Delaware limited liability company, Sportime, LLC, a Delaware limited liability company, Childcraft Education Corp., a New York corporation, Bird-in-Hand Woodworks, Inc. a New Jersey corporation, Califone International, Inc. a Delaware corporation, and Premier Agendas, Inc., a Washington corporation (collectively, the "Subsidiary Borrowers" and, together with the Administrative Borrower, the "Borrowers"), Select Agendas, Corp., a Nova Scotia unlimited liability company, Frey Scientific, Inc. and Sax Arts & Crafts, Inc., each a Delaware corporation, each as a Guarantor, each Subsidiary of the Administrative Borrower (other than the Subsidiary Borrowers) that becomes a Guarantor hereunder and party hereto from time to time in accordance with Section 5.11, each of the lenders appearing on the signature pages hereof, together with such other lenders as may from time to time become a party to this Agreement pursuant to the terms and conditions of Article VIII hereof (collectively, the "Lenders"), and Bayside Finance, LLC, a Delaware limited liability company ("Bayside"), in its separate capacity as administrative agent for itself and all other Lenders (in such capacity, together with its successors and assigns, the "Administrative Agent"), and in its separate capacity as collateral agent for itself and all other Lenders (in such capacity, together with its successors and assigns, the "Collateral Agent" and, collectively with the Administrative Agent, the "Agent").

**RECITALS:**

A. The Borrowers and Guarantors (other than Select Agendas, Corp.) have commenced a case under Chapter 11 of Title 11 of the United States Code in the United States Bankruptcy Court for the District of Delaware, and have retained possession of their respective assets and are authorized under the Bankruptcy Code to continue the operation of their businesses as debtors-in-possession.

B. Prior to the commencement of the Chapter 11 Cases, Prepetition Term Loan Lenders made loans and advances and provided other financial or credit accommodations to Borrowers secured by substantially all assets and properties of such Borrowers and the Guarantors as set forth in the Prepetition Term Loan Documents.

C. The Bankruptcy Court has entered an Interim Order pursuant to which Administrative Agent and Lenders may make post-petition loans and advances, and provide other financial accommodations, to Borrowers secured by substantially all the assets and properties of the Obligors as set forth in the Interim Order or Final Order, as applicable, and this Agreement.

D. The Interim Order or Final Order, as applicable, provides that as a condition to the making of such post-petition loans, advances and other financial accommodations, Borrowers shall execute and deliver this Agreement.

E. Borrowers have requested that Administrative Agent and Lenders make post-petition loans and advances and provide other financial accommodations to Borrowers, and Administrative Agent and Lenders are willing to do so, subject to the terms and conditions contained herein.

NOW, THEREFORE, in consideration of the premises herein contained and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties, intending to be legally bound, agree as follows:

## **ARTICLE I**

### **DEFINITIONS**

Section 1.1. Definitions. For all purposes of this Agreement, except as otherwise expressly provided or unless the context otherwise requires:

- (a) the terms defined in the preamble have the meanings therein assigned to them;
- (b) the terms defined in this Article have the meanings assigned to them in this Article, and include the plural as well as the singular;
- (c) The following terms have the meanings given to them in the applicable UCC: "commodity account", "commodity contract", "commodity intermediary", "deposit account", "entitlement holder", "entitlement order", "equipment", "financial asset", "general intangible", "goods", "instruments", "investment property", "money", "securities account", "securities intermediary" and "security entitlement";
- (d) titles of articles, sections, clauses, exhibits, schedules and annexes contained in any Loan Document are without substantive meaning or content of any kind whatsoever and are not a part of the agreement between the parties hereto;
- (e) the terms "herein", "hereof" and similar terms refer to this Agreement as a whole;
- (f) in the computation of periods of time from a specified date to a later specified date in any Loan Document, the terms "from" means "from and including" and the words "to" and "until" each mean "to but excluding" and the word "through" means "to and including";
- (g) in any other case, the term "including" when used in any Loan Document means "including without limitation";
- (h) the term "documents" means all writings, however evidenced and whether in physical or electronic form, including all documents, instruments, agreements, notices, demands, certificates, forms, financial statements, opinions and reports;
- (i) the term "incur" means incur, create, make, issue, assume or otherwise become directly or indirectly liable in respect of or responsible for, in each case whether directly or indirectly, and the terms "incurrence" and "incurred" and similar derivatives shall have correlative meanings;
- (j) all references to a time of day shall refer to such time of day in New York;
- (k) references in this Agreement to an Exhibit, Schedule, Article, Section or clause refer to the appropriate Exhibit or Schedule to, or Article, Section or clause in, this Agreement;
- (l) references in any Loan Document, to (A) any agreement shall include, without limitation, all exhibits, schedules, appendixes and annexes to such agreement and, unless the prior consent of any Secured Party required therefor is not obtained, or such modification or replacement is not permitted under this Agreement, any modification to any term of such agreement and any replacement thereof, (B) any statute shall be to such statute as modified from time to time and to any successor legislation thereto, in each case as in effect at the time any such reference is operative;

(m) all accounting terms not otherwise defined herein have the meanings assigned to them in accordance with GAAP (except for the term “property”, which shall be interpreted as broadly as possible, including, in any case, cash, securities, other assets, rights under contractual obligations and Permits and any right or interest in any property, the terms “property” and “assets” to have the same meaning);

(n) all accounting terms, unless otherwise specified, shall be deemed to refer to Persons and their Subsidiaries on a consolidated basis in accordance with GAAP; and

(o) [Reserved]

“2011 Convertible Subordinated Debenture Documents” means the 2011 Convertible Subordinated Debentures, the 2011 Convertible Subordinated Debenture Indenture and all other documents, instruments and agreements relating thereto, in each case amended, modified and supplemented from time to time in accordance with the provisions of this Agreement.

“2011 Convertible Subordinated Debenture Indenture” means the Indenture dated as of March 1, 2011 between the Administrative Borrower and The Bank of New York Mellon Trust Company, N.A., as amended, modified and supplemented from time to time in accordance with the provisions of this Agreement.

“2011 Convertible Subordinated Debentures” means those 3.75% Convertible Subordinated Debentures of the Administrative Borrower due 2026.

“ABL DIP Agent” means, collectively, the administrative agent and the co-collateral agents under the ABL DIP Credit Agreement, or any of them, as the context may require.

“ABL DIP Credit Agreement” means the Senior Secured Debtor-In-Possession Credit Facility, dated as of the date hereof, by and among the borrowers and guarantors named therein, Wells Fargo Capital Finance, LLC, as agent, and the lenders party thereto from time to time, as amended from time to time.

“ABL DIP Credit Agreement Availability” means, as of any date of determination, the amount that Borrowers are entitled (after taking into account borrowing base limits and other requisite conditions to borrowing) to borrow as additional ABL DIP Credit Loans under Section 2.1 of the ABL DIP Credit Agreement (after giving effect to the then outstanding ABL DIP Credit Obligations, it being understood that the ABL DIP Credit Agreement Availability shall in any event not exceed the excess, if any, of the Stated Borrowing Base then in effect (such Stated Borrowing Base not to exceed \$175,000,000 in any event) over the amount of outstanding ABL DIP Credit Obligations), or as additional revolving loans under the applicable provisions of any permitted refinancing thereof in accordance with clause (e) of the definition of “Permitted Debt”; provided, that the borrowing base limits for purposes of such determination (including without limitation all applicable advance rates, eligibility requirements, and specified reserves (including without limitation the Landlord Reserve, if any, for each location for which a satisfactory collateral access agreement has not been obtained)) shall be those set forth in the ABL DIP Credit Agreement as in effect on the date hereof and applied in a manner consistent with the Borrowing Base Certificate delivered to the Administrative Agent as of the date hereof (for the avoidance of doubt, without giving effect, for purposes of calculating the ABL DIP Credit Agreement Availability hereunder, to (i) any revisions of “excluding criteria” (as permitted in the ABL DIP Agent’s Permitted Discretion within the proviso of each definition of Eligible Accounts and Eligible Inventory in the ABL DIP Credit Agreement) that cause ineligible Accounts and ineligible Inventory to be Eligible Accounts or Eligible Inventory or (ii) any reductions in the amounts of Lien Priority Reserves (as defined in the Intercreditor

Agreement (as in effect on the date hereof)) unless in the ABL DIP Agent's Permitted Discretion (as defined in the ABL DIP Credit Agreement) such reductions reflect the reduction of the amount of the claim secured by the applicable Lien having priority superior to the priority of the Lien in favor of the ABL DIP Agent on the ABL DIP Credit Priority Collateral, on account of which the Lien Priority Reserve was applied).

"ABL DIP Credit Commitment" means, with respect to each ABL DIP Credit Lender, the obligation of such ABL DIP Credit Lender to make ABL DIP Credit Loans and participate in the Letters of Credit, as contemplated by and pursuant to the ABL DIP Credit Agreement, or the aggregate amount of such obligation as in effect from time to time, as the context may require.

"ABL DIP Credit Documents" means, collectively, (i) the ABL DIP Credit Agreement and (ii) each other Loan Document (as defined therein).

"ABL DIP Credit Lender" means all lenders party to the ABL DIP Credit Agreement having Revolving Commitments, or holding outstanding ABL DIP Credit Loans, under the ABL DIP Credit Agreement

"ABL DIP Credit Loans" means the ABL DIP Credit Loans made by the lenders under the ABL DIP Credit Agreement to the Borrowers pursuant to the ABL DIP Credit Agreement.

"ABL DIP Credit Obligations" means the ABL DIP Credit Loans, all LC Obligations and all other "Obligations" under and as defined in ABL DIP Credit Agreement.

"ABL DIP Credit Priority Collateral" means "ABL Priority Collateral" under and as defined in the Intercreditor Agreement.

"Accelerated Learning Business" means the Accelerated Learning Business Segments, collectively and taken as a whole.

"Accelerated Learning Business Segments" means the collective reference to, and individually any one of, (i) the Delta Business, (ii) Reading Business, (iii) Health Business, and (iv) Planner Business.

"Acceptable Cash Management System" has the meaning set forth in Section 5.12.

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

"Accounts" means all "accounts," as such term is defined in the UCC, now owned or hereafter acquired by any Obligor, including (a) all accounts receivable, other receivables, rentals, book debts and other forms of obligations (other than, except in the case of rentals, forms of obligations evidenced by chattel paper or instruments), (including any such obligations that may be characterized as an account or contract right under the UCC), (b) all of each Obligor's rights in, to and under all purchase orders or receipts for goods or services, (c) all of each Obligor's rights to any goods represented by any of the foregoing (including unpaid sellers' rights of rescission, replevin, reclamation and stoppage in transit and rights to returned, reclaimed or repossessed goods), (d) all rights to payment due to any Obligor for property Disposed of, arising out of the use of a credit card or charge card, or for services rendered or to be rendered by such Obligor or in connection with any other transaction (whether or not yet earned by performance on the part of such Obligor), and (e) all collateral security of any kind, now or hereafter in existence, given by any Account Debtor or other Person with respect to any of the foregoing.

"Additional Mortgaged Property" has the meaning set forth in Section 5.11.

"Adequate Protection Obligations" shall mean "Adequate Protection Liens" as defined in the Interim Order or the Final Order, as applicable, 507(b) Claims (as defined in the Interim Order or the Final Order, as applicable) and Adequate Protection Payments.

"Adequate Protection Payments" has the meaning set forth in the Interim Order or the Final Order, as applicable.

"Administrative Agent" has the meaning set forth in the Preamble to this Agreement.

"Administrative Agent Fee Agreement" means the Administrative Agent Fee Agreement, dated as of the date hereof, between the Administrative Borrower and, inter alia, the Administrative Agent.

"Administrative Borrower" has the meaning set forth in the Preamble to this Agreement.

"Adjustment Date" has the meaning set forth in Section 8.12.

"Affiliate" means, with respect to any Person, (a) each Person that, directly or indirectly, owns or controls, whether beneficially, or as a trustee, guardian or other fiduciary, twenty percent (20%) or more of a Person, (b) each Person that Controls, is Controlled by or is under common Control with such Person, (c) each of such Person's, officers, directors, joint venturers and partners and (d) the family members, spouses and lineal descendants of any of the foregoing. "Control" (and variations thereof, such as "Controlled") of or with respect to a Person shall mean the possession, directly or indirectly, of the power to direct or cause the direction of its management or policies, whether through the ownership of voting securities, by contract or otherwise; provided, however, that the term "Affiliate" shall in no event include the Agent or a Lender.

"Agent" has the meaning set forth in the Preamble to this Agreement.

"Agent Expenses" means (a) all reasonable costs and expenses (including taxes, and insurance premiums) required to be paid by an Obligor under any of the Loan Documents that are paid, advanced, or incurred by the Agent (for the sake of clarity, including both the Administrative Agent and the Collateral Agent, individually or collectively) or its Affiliates, (b) all reasonable fees or charges paid or incurred by the Agent or its Affiliates in connection with the Secured Parties' transactions with any Obligors, including reasonable fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the applicable jurisdictions' patent and trademark office and/or copyright office), filing, recording, publication, Appraisals, real estate surveys (including each Survey), real estate title policies and endorsements (including each Mortgage Policy), and environmental audits, and all other reasonable fees and charges associated with any the Mortgages and related matters, (c) all reasonable out-of-pocket costs and expenses incurred by the Agent in the disbursement of funds to any Obligor or Secured Parties (by wire transfer or otherwise), (d) all reasonable out-of-pocket charges paid or incurred by the Agent resulting from the dishonor of checks payable by or to any Obligor, (e) all out-of-pocket costs and expenses paid or incurred by the Agent (including attorney fees) to correct any default or enforce any provision of the Loan Documents, or after the occurrence 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) all reasonable out-of-pocket fees and expenses (including travel, meals, and lodging) of the Agent, its Affiliates and/or its representatives, consultants, advisors or agents related to any inspections, examinations or audits of Obligors or the Collateral, (g) all out-of-pocket costs and expenses of third party claims or any other suit

paid or incurred by the Agent (including attorney fees) in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Secured Parties' relationship with any Obligor, (h) the Agent's or its Affiliates' reasonable costs and expenses (including reasonable attorneys' and consultants' fees) incurred in advising, structuring, drafting, negotiating, reviewing, executing, interpreting, administering (including travel, meals, and lodging and reasonable fees, costs and expenses incurred in connection with Intralinks® or any other Platform), or syndicating, or modifying any term of or terminating any of, the Loan Documents, any commitment or proposal letter therefor, any other document prepared in connection therewith or the consummation and administration of any transaction contemplated therein (including, without limitation, any fees, costs or expenses paid or incurred by the Agent (or its Affiliates) with respect to any third party service providers (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses)), and (i) the Agent's costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in amending, terminating, enforcing (including reasonable attorneys', accountants', consultants', and other agents' and advisors' fees and expenses incurred in connection with a "workout," a "restructuring," or an insolvency proceeding concerning any Obligor, 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, or in commencing, defending, conducting, intervening in, or taking any other action with respect to, any proceeding (including any bankruptcy or insolvency proceeding) related to any Group Member, Loan Document, Obligation or Related Transaction (or the response to and preparation for any subpoena or request for document production relating thereto).

"Agent Firm" has the meaning set forth in Section 8.15.

"Agent's Liens" means the Liens granted by Obligors to the Collateral Agent under the Loan Documents.

"Agreement" means this Senior Secured Super Priority Debtor-in-Possession Credit Agreement, as it may be modified, supplemented, amended or restated from time to time.

"Anti-Terrorism Law" means any statute, treaty, law (including common law), ordinance, regulation, rule, order, opinion, release, injunction, writ, decree or award of any Governmental Authority relating to terrorism or money laundering, including Executive Order No. 13224, the USA Patriot Act, the International Economic Emergency Powers Act, the Trading with the Enemy Act, or any other statute, executive order or other authority administered by the Office of Foreign Assets Control in the United States Department of the Treasury.

"APA Closing Date" has the meaning ascribed to the term "Closing Date" in the Asset Purchase Agreement.

"Applicable Law" means (a) any domestic or foreign statute, law (including common and civil law), treaty, code, ordinance, rule, regulation, restriction or by-law (zoning or otherwise); (b) any judgment, order, writ, injunction, decision, ruling, decree or award; (c) any regulatory policy, practice, guideline or directive; or (d) any franchise, license, qualification, authorization, consent, exemption, waiver, right, permit or other approval of any Governmental Authority, binding on or affecting the Person referred to in the context in which the term is used or binding on or affecting the property of such Person, in each case whether or not having the force of law.

"Applicable Margin" means, in respect of any date, 14.0% per annum.

"Applicant" has the meaning set forth in Section 8.12.



“Application Event” means the occurrence of any Event of Default and the exercise thereupon by the Administrative Agent of any of the remedies described in Section 7.2.

“Appraisal” means any appraisal acceptable to the Administrative Agent of Collateral, delivered to the Administrative Agent in connection herewith.

“Approved Budget” means the initial budget (a copy of which is attached as Exhibit H), approved by the Borrowers and Administrative Agent prior to commencement of the Chapter 11 Cases, projecting operations for the ensuing six-month period and including, without limitation, (i) a thirteen-week cash flow forecast, (ii) a six-month consolidated balance sheet, income statement and statement of cash flows, and (iii) income statements by Business Segment; such thirteen-week cash flow forecast to be updated (in substantially the same format as the prior thirteen-week cash flow forecast) monthly by Borrowers in accordance with Section 5.1(y), submitted to Administrative Agent and, upon acceptance by the Administrative Agent in its sole discretion, the prior Approved Budget, as modified by the updated thirteen-week cash flow forecast shall constitute the then Approved Budget.

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

“Asset Purchase Agreement” mean the Asset Purchase Agreement, dated as of [●], 2013, among Bayside School Specialty, LLC, School Specialty, Inc. and the other sellers named therein.

“Assignee” means an Applicant to whom all or a portion of the rights of a Lender have been assigned pursuant to and in accordance with Section 8.12.

“Assignment” means the assignment of all or a portion of the rights of a Lender to an Assignee pursuant to and in accordance with Section 8.12.

“Assignment Certificate” has the meaning set forth in Section 8.12.

“Availability” means, with respect to any fiscal week, an amount equal to (i) the amount labeled as “Ending Funded Balance” shown on the accepted thirteen-week cash flow forecast under the Approved Budget for the fiscal week in which a Notice of Borrowing is delivered *minus* (ii) the principal amount of the Revolving Loan outstanding as of the last day of the prior fiscal week.

“Available Net Assets” has the meaning set forth in Section 9.4.

“Avoidance Actions” has the meaning set forth in the Interim Order or the Final Order, as applicable.

“Bank Product” means any one or more of the following financial products or accommodations extended to School Specialty or its Subsidiaries: (a) credit cards (including commercial credit cards (including so-called “procurement cards” or “P-cards”)), (b) credit card processing services, (c) debit cards, (d) stored value cards, (e) cash management services, or (f) transactions with respect to Rate Hedging Obligations, Commodity Hedging Obligations, FX and Currency Option Obligations.

“Bank Product Agreements” means those agreements entered into from time to time by School Specialty or its Subsidiaries in connection with the obtaining of any Bank Products.

“Bankruptcy Code” means the Federal Bankruptcy Reform Act of 1978 (11 U.S.C. Section 101, et seq.) as now and hereafter in effect, or any applicable successor statute.

"Bankruptcy Court" means the United States Bankruptcy Court in the District of Delaware.

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

"Bayside" has the meaning set forth in the Preamble to this Agreement.

"Bayside Sale" means a sale pursuant to Section 363 of the Bankruptcy Code of all or substantially all of the assets of the Borrowers to the Agent or one or more affiliates thereof.

"Bidding Procedures Order" has the meaning set forth in the Asset Purchase Agreement.

"Blocked Person" has the meaning set forth in Section 4.23(b).

"Borrowers" has the meaning set forth in the Preamble to this Agreement.

"Borrowing Base Certificate" means a borrowing base certificate of the Administrative Borrower required pursuant to the ABL DIP Credit Agreement, certified on behalf of the Administrative Borrower by its chief financial officer or chief executive officer.

"Business Day" means any day other than a Saturday or Sunday on which national banks are required to be open for business in New York, and, in addition, if such day relates to the fixing of a LIBOR Rate, a day on which dealings in U.S. dollar deposits are carried on in the London interbank eurodollar market.

"Business Segment Financial Statements" means the consolidated and consolidating monthly, quarterly and annual financial statements, including, in the case of clauses (w), (x) and (y) below, balance sheets, income statements, and statements of capital expenditures, retained earnings and shareholders' equity, and Product Development Expense, and (in the case of clause (z) below) statements of revenue, gross margin, capital expenditures, and Product Development Expense, in any event in no less a level of detail than the financial statements provided to the Agent prior to the Closing Date, reflecting the performance of (w) the Accelerated Learning Business (accompanied by reconciling information in detail reasonably satisfactory to the Agent for any Reconcilable Inclusions with respect to the Accelerated Learning Business), (x) the Educational Resources Business, (y) each Business Segment on a standalone basis (accompanied, in the case of the Planner Business, by reconciling information in detail reasonably satisfactory to the Agent for any Reconcilable Inclusions with respect to the Planner Business), and (z) each Delta Business Sub-Segment on a standalone basis.

"Business Segments" means, collectively, each Accelerated Learning Business Segment and each Educational Resources Business Segment.

"Capital Adequacy Rule" has the meaning set forth in Section 2.12(b)(ii).

"Capital Adequacy Rule Change" has the meaning set forth in Section 2.12(b)(iii).

"Capital Expenditures" means, for any period, the aggregate of all expenditures by the Borrowers and the other Obligor during such period that are capital expenditures as determined on a consolidated basis in accordance with GAAP, whether such expenditures are paid in cash or financed.

"Capitalized Lease Liabilities" of any Person means all monetary obligations of such Person under any leasing or similar arrangement that, in accordance with GAAP, would be classified as a

capitalized lease, and, for purposes of this Agreement, the amount of such obligations shall be the capitalized amount thereof, determined in accordance with GAAP.

"Carson-Dellosa Drag-Along Sale" means a Disposition of the entirety of the Obligors' Equity Interests in Carson-Dellosa Publishing, LLC pursuant to the exercise by the CJE Members (as defined in the Operating Agreement of Carson-Dellosa Publishing, LLC) of their drag-along rights (under and pursuant to Section 11.6 of the Operating Agreement of Carson-Dellosa Publishing, LLC) so as to require the Obligors to Dispose of such Equity Interests in accordance with the terms of Section 11.6 of the Operating Agreement of Carson-Dellosa Publishing, LLC.

"Carve-Out" has the meaning set forth in the Interim Order or the Final Order, as applicable.

"Cash Dominion Event" means the occurrence of any of the events of circumstances described in clauses (i) through (iv) of the definition of "Triggering Event" in the Intercreditor Agreement (as in effect on the date hereof).

"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 180 days 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 180 days from the date of acquisition thereof and, at the time of acquisition, having one of the two highest ratings obtainable from either Standard & Poor's Rating Group or Moody's Investors Service, Inc., (c) certificates of deposit, time deposits, overnight bank deposits or bankers' acceptances maturing within 180 days 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 at the date of acquisition thereof combined capital and surplus of not less than \$250,000,000, (d) deposit accounts maintained with (i) any bank that satisfies the criteria described in clause (c) 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, and (e) repurchase obligations of any commercial bank satisfying the requirements of clause (c) 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 (c) above.

"Cash Management Account" means all of the depository and operating accounts of the Borrowers, including those specified on Schedule 4.15, as it may be hereafter supplemented and amended, all of which accounts shall be subject to a Control Agreement in favor of the Collateral Agent.

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

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

"Change of Control" means (a) an event or series of events by which:

(i) any "person" or "group" (as such terms are used in Section 13(d) and 14 (d) of the Securities Exchange Act of 1934, but excluding any employee benefit plan of such person or its subsidiaries, and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) becomes the "beneficial owner" (as defined in Rules 13-d and 13d-5 under the Securities Exchange Act of 1934, except that a person or group shall be deemed

to have “beneficial ownership” of all Equity Interests that such person or group has the right to acquire (such right, an “option right”), whether such right is exercisable immediately or only after the passage of time), directly or indirectly, of thirty-five percent (35%) of the Equity Interests of the Administrative Borrower entitled to vote for members of the board of directors or equivalent governing body of the Administrative Borrower on a fully diluted basis (and taking into account all such securities that such person or group has the right acquire pursuant to any option right); or

(ii) during any period of 12 consecutive months, a majority of the members of the board of directors or other equivalent governing body of the Administrative Borrower cease to be composed of individuals (i) who were members of that board or equivalent governing body on the first day of such period or whose election or nomination to that board or equivalent governing body was approved by individuals referred to in this clause (i) constituting at the time of such election or nomination at least a majority of that board or equivalent governing body or (ii) whose election or nomination to that board or other equivalent governing body was approved by individuals referred to in clause (i) above constituting at the time of such election or nomination at least a majority vote of the board or equivalent governing body (excluding, in the case of any member of the board of directors other than any member in office on the Closing Date, any individual whose initial nomination for, or assumption of office as, a member of that board or equivalent governing body occurs as a result of an actual or threatened solicitation of proxies or consents for the election or removal of one or more directors by any person or group other than a solicitation for the election of one or more directors by or on behalf of the board of directors); and

(b) any “Change in Control” or “Fundamental Change” or analogous event to similar effect (as such term, or any analogous term to similar effect or use, is defined in the ABL DIP Credit Documents or in any agreement governing any Debt that is subordinated or junior to the Obligations or any similar term or event thereunder) shall occur.

“Chapter 11 Cases” means the Chapter 11 Cases of Borrowers which are being jointly administered under the Bankruptcy Code and are pending in the Bankruptcy Court.

“Closing Date” means the first date practicable following the entry of the Interim Order by the Bankruptcy Court expected to be on or prior to [ ], 2013; provided that all of the conditions precedent to the closing of the transactions contemplated hereby are satisfied or waived in accordance with Section 3.1 and Section 3.2.

“Closing Fee” has the meaning set forth in Section 2.10(h).

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

“Collateral” means all assets and interests in assets and proceeds and products thereof now owned or hereafter acquired by any Obligor including, without limitation, all capital stock and other ownership interests (except that only 65% of the capital stock of CFCs would be required to be pledged if the pledge of a greater percentage would result in material adverse tax consequences), all promissory notes and the proceeds and products of each of the foregoing and, and, upon the entry of the Final Order, proceeds of all Avoidance Actions.

“Collateral Agent” has the meaning set forth in the Preamble to this Agreement.

“Collateral Access Agreement” means a waiver, subordination or acknowledgement agreement from (a) any lessor of any real property where any Obligor’s books and records relating to the Collateral are located, or (b) any other Person in possession of, having a Lien upon, or having rights or interests in, any Obligor’s property or assets (including, without limitation, books and records, equipment, and Inventory), in each case, in form and substance reasonably satisfactory to the Administrative Agent.

"Commitment Fees" has the meaning set forth in Section 2.10(j).

"Commitments" means the Term Commitments and Revolving Commitments, or any of them.

"Commitment Termination Fee" has the meaning set forth in Section 2.10(l).

"Committees" means, collectively, the official committee of unsecured creditors and any other committee formed, appointed or approved in any Chapter 11 Case.

"Commodity Hedging Obligations" means any and all obligations of the Group Members under (a) any and all agreements, devices or arrangements designed to protect any Group Member from the fluctuations of commodity prices, commodity price cap or collar protection agreements, and commodity forward and future contracts, swaps, options, puts and warrants, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any of the foregoing.

"Communications" has the meaning set forth in Section 10.3(b).

"Compliance Certificate" means a certificate in the form of Exhibit A, duly completed and signed by the chief executive officer or the chief financial officer of the Administrative Borrower.

"Consigned Goods" has the meaning set forth in Section 5.13.

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

"Consultant" has the meaning set forth in Section 7.2.

"Contingent Obligation" means any obligation of a Person arising from a guaranty, indemnity or other assurance of payment or performance of any Debt, lease, dividend or other obligation ("primary obligations") of another obligor ("primary obligor") (excluding the guarantee of operating leases) in any manner, whether directly or indirectly, including any obligation of such Person under any (a) guaranty, endorsement, co-making or sale with recourse of an obligation of a primary obligor; (b) obligations of such Person to pay a specified purchase price for goods or services, whether or not delivered or accepted (i.e., take-or-pay and similar obligations) or regardless of any other nonperformance by any other party to an agreement (except trade accounts payable arising in the ordinary course of business that are not past due by more than sixty (60) days from the due date); and (c) arrangement (i) to purchase any primary obligation or security therefor, (ii) to supply funds for the purchase or payment of any primary obligation, (iii) to maintain or assure working capital, equity capital, net worth solvency or any other financial condition of the primary obligor, (iv) to advance funds to, or purchase property or services from, any other Person in order to maintain any financial condition of such Person, or (v) otherwise for the purpose of assuring the ability of the primary obligor to perform a primary obligation or to assure or hold harmless the holder of any primary obligation against loss in respect thereof; *provided* that reimbursement obligations with respect to Permitted Surety Bonds that have not been drawn shall not constitute Contingent Obligations. The amount of any Contingent Obligation shall be deemed to be the stated or determinable amount of the primary obligation (or, if less, the maximum amount for which such Person

may be liable under the instrument evidencing the Contingent Obligation) or, if not stated or determinable, the maximum reasonably anticipated liability with respect thereto.

"Control" has the meaning set forth in the definition of "Affiliate".

"Control Agreement" means a control agreement, in form and substance satisfactory to the Administrative Agent, executed and delivered by the applicable Obligor, the Collateral Agent, and the applicable securities intermediary (with respect to a securities account) or bank (with respect to a deposit account, including a Cash Management Account).

"Control Person" has the meaning set forth in Section 4.19.

"Controlled Group" means the Administrative Borrower, each of its Subsidiaries and each other Person required to be aggregated with the Administrative Borrower under Section 414(b), (c), (m) or (o) of the IR Code.

"Copyright Security Agreement" means a Copyright Security Agreement executed and delivered by an Obligor in favor of the Agent in substantially the form attached to the Security Agreement.

"Debt" of any Person means, without duplication:

- (a) all indebtedness and other obligations of such Person for borrowed money (including the Loans) whether senior or subordinated;
- (b) all obligations of such Person evidenced by bonds, debentures, notes, reimbursement agreements, recourse agreements or other similar instruments;
- (c) all obligations of such Person to pay the deferred purchase price of property or services (including, without limitation, accounts payable), except trade accounts payable arising in the ordinary course of business that are not past due by more than sixty (60) days from the due date;
- (d) all Capitalized Lease Liabilities and Synthetic Lease Liabilities and Sale/Leaseback Liabilities of such Person;
- (e) all obligations or other liabilities of others secured by a Lien on any asset of such Person, whether or not such obligations or other liabilities are assumed by such Person;
- (f) all Debt of others guaranteed (or intended to be guaranteed) by such other Person (whether directly or indirectly guaranteed, endorsed, co-made, discounted or sold with recourse);
- (g) any exposure under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the applicable Hedge Agreement were terminated on the date of determination);
- (h) reimbursement and other obligations with respect to letters of credit and other documentary credits, bankers acceptances and/or other financial products whether drawn or undrawn, contingent or otherwise (other than reimbursement obligations with respect to Permitted Surety Bonds that have not been drawn);
- (i) indebtedness and other obligations attributable to factoring, securitization or analogous transactions;
- (j) all contingent or unfunded liabilities under any ERISA Plan, Pension Plan or other employee benefit plan or pension;

- (k) Disqualified Equity Interests of such Person; and
- (1) all Contingent Obligations of such Person not otherwise described above.

For purposes of this definition, (i) the amount of any Debt 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 Debt, and (ii) the amount of any Debt which is limited or is non-recourse to a Person or for which recourse is limited to an identified asset shall be valued at the lesser of (A) if applicable, the limited amount of such obligations, and (B) if applicable, the fair market value of such assets securing such obligation.

“Default” means an event that, with giving of notice or passage of time or both, would constitute an Event of Default.

“Defaulting Lender” has the meaning set forth in Section 2.19.

“Default Rate” has the meaning set forth in Section 2.3.

“Delta Business” means the Delta Business Sub-Segments collectively and taken as a whole.

“Delta Business Sub-Segments” means the collective reference to, and individually any one of, (i) Delta/FOSS, (ii) Frey Scientific, and (iii) Other Science Products.

“Delta/FOSS” means the Delta and Refurbishment marketing units that are a sub-segment of the Delta Business that offers an inquiry-based elementary and middle school science curriculum, including instructional and classroom resources and hands-on investigation materials, the Delta Science Module program, the FOSS (Full Option Science System) program and kit refill materials.

“Disposition” means any sale, transfer, lease, licensing, assignment, rental or other disposition of any asset, interest or property. “Dispose” has a correlative meaning.

“Disqualified Equity Interests” means any Equity Interest that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests), pursuant to a sinking fund obligation or otherwise (except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments), (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests), in whole or in part, (c) provides for the scheduled payments of dividends in cash, or (d) is or becomes convertible into or exchangeable for Debt or any other Equity Interests that would constitute Disqualified Equity Interests, in each case, prior to the date that is 180 days after the Maturity Date.

“DIP Liens” has the meaning ascribed to it in the Interim Order or the Final Order, as applicable.

“DIP Order” means the Interim Order or the Final Order, as applicable under the circumstances.

“Dollars” or “\$” means United States dollars.

“Educational Resources Administrator” means the category within the Educational Resources Segment that offers basic classroom supplies, office products, janitorial and sanitation supplies, school equipment, technology products and paper.

“Educational Resources Business” means the Educational Resources Business Segments, collectively and taken as a whole.

“Educational Resources Business Segments” means the collective reference to, and individually any one of, (i) Educational Resources Educator, (ii) Educational Resources Administrator, and (iii) Educational Resources Furniture.

“Educational Resources Educator” means the category within the Educational Resources Segment that offers supplemental learning materials, teaching resources, upper-grade-level art supplies, early childhood products, physical education equipment and special needs equipment and classroom technology.

“Educational Resources Furniture” means the category within the Educational Resources Segment that offers classroom furniture, library furniture, cafeteria furniture, office furniture, fixed furniture such as bleachers and lockers, as well as construction and project management services.

“Eligible Assignee” means any Person to whom it is permitted to assign Loans and, if applicable, Commitments pursuant to Section 8.12.

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

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

“Equity Interests” means shares of capital stock, partnership interests, membership interests in a limited liability company, beneficial interests in a trust or other equity ownership interests in a Person, and any warrants, options or other rights entitling the holder thereof to purchase or acquire any such equity interest, but does not include the 2011 Convertible Subordinated Debentures.

“ERISA” means the Employee Retirement Income Security Act of 1974, as amended.



"ERISA Event" means (a) the existence of a condition or event with respect to an ERISA Plan that presents a risk either of the imposition of an excise tax or any other liability on any Group Member or of the imposition of a Lien on any portion of the assets of any Group Member; (b) the engagement by a Controlled Group member in a non-exempt "prohibited transaction" (as defined under Section 406 of ERISA or Section 4975 of the IR Code) or a breach of a fiduciary duty under ERISA that could reasonably be expected to result in liability to any Group Member; (c) the application by a Controlled Group member for a waiver from the minimum funding requirements of Section 412 of the IR Code or Section 302 of ERISA or a Controlled Group member is required to provide security under Section 401(a)(29) of the IR Code or Section 307 of ERISA; (d) the occurrence of a Reportable Event with respect to any Pension Plan as to which notice is required to be provided to the PBGC; (e) the withdrawal by a Controlled Group member from a Multiemployer Plan in a "complete withdrawal" or a "partial withdrawal" (as such terms are defined in Sections 4203 and 4205 of ERISA, respectively); (f) the involvement of, or occurrence or existence of any event or condition that results in the involvement of, a Multiemployer Plan in any reorganization under Section 4241 of ERISA; (g) the failure, as determined in writing by the Internal Revenue Service or Treasury Department, of an ERISA Plan (and any related trust) that is intended to be qualified under Sections 401 and 501 of the IR Code to be so qualified or the failure, as determined in writing by the Internal Revenue Service or Treasury Department, of any "cash or deferred arrangement" under any such ERISA Plan to meet the requirements of Section 401(k) of the IR Code; (h) the taking by the PBGC of any steps to terminate a Pension Plan (other than steps associated with a standard termination under Title IV of ERISA) or to appoint a trustee to administer a Pension Plan, or the taking by a Controlled Group member of any steps to terminate a Pension Plan; (i) the failure by a Controlled Group member or an ERISA Plan to satisfy any requirement of law applicable to an ERISA Plan if such failure could reasonably be expected to result in material liability to any Group Member; (j) the commencement, existence or threatening of a claim, action, suit, audit or investigation with respect to an ERISA Plan, other than a routine claim for benefits; or (k) any incurrence by a Controlled Group member of any liability for post-retirement benefits under any Welfare Plan, other than as required by Applicable Law, including Section 601 of ERISA, et. seq. or Section 4980B of the IR Code.

"ERISA Plan" means an "employee benefit plan" (within the meaning of Section 3(3) of ERISA) that is, or within the six years preceding any date of determination has been, sponsored, maintained or contributed to by a Controlled Group member or with respect to which any Controlled Group may have any liability.

"Event of Default" has the meaning set forth in Section 7.1.

"Excluded Taxes" means, with respect to the Administrative Agent and any Lender, (a) income or franchise taxes imposed on (or measured by) its net income (i) by any Governmental Authority or other authority, or by the jurisdiction under the laws of which such recipient is organized or in which its principal office is located or, in the case of a Lender, in which its applicable lending office is located or (ii) as a result of a present or former connection between such person and the jurisdiction imposing such Tax (other than connections solely arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned any interest in any Loan or Loan Document), (b) any branch profits taxes imposed (i) by any Governmental Authority or any similar tax imposed by any other jurisdiction in which the Borrower is located or (ii) as a result of a present or former connection between such person and the jurisdiction imposing such Tax (other than connections solely arising from such person having executed, delivered, become a party to, performed its obligations under, received payments under, received or perfected a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold assigned an interest in any Loan or Loan Document), (c) in the case of a Foreign Lender, any withholding tax that is imposed on amounts payable to such Foreign Lender at the time such Foreign

Lender becomes a party to this Agreement (or designates a new lending office), and (d) U.S. backup withholding Tax.

"Extraordinary Receipts" means any cash received after the Closing Date by any Group Member not in the ordinary course of business (and not consisting of proceeds from the Disposition of, or any casualty or condemnation with respect to, Inventory, equipment or Real Property) consisting of (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action (other than amounts representing the reimbursement of out-of-pocket costs and expenses incurred after the Closing Date with respect to third-party claims and other than collections of Accounts in the ordinary course of business), (b) indemnity payments or purchase price adjustments (other than a working capital adjustment) received in connection with any purchase agreement (other than amounts representing the reimbursement of out-of-pocket costs and expenses incurred after the Closing Date with respect to third-party claims), or (c) tax refunds or rebates (other than commodity tax and research and development refunds and credits).

"FATCA" means Sections 1471-1474 of the IR Code in effect as of the date hereof or any amended or successor version and any current or future Treasury regulations issued thereunder.

"Federal Funds Rate" means at any time an interest rate per annum equal to the weighted average of the rates for overnight federal funds transactions with members of the Federal Reserve System arranged by federal funds brokers, as published for such day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day for such transactions received by the Agent from three federal funds brokers of recognized standing selected by it, it being understood that the Federal Funds Rate for any day which is not a Business Day shall be the Federal Funds Rate for the next preceding Business Day.

"Field Review" has the meaning set forth in Section 5.2(a).

"Final Order" means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after a final hearing under Bankruptcy Rule 4001(c)(2) or such other procedures as approved by the Bankruptcy Court which order shall be satisfactory in form and substance to Agent, in its sole discretion, and which order is in effect and not stayed, together with all extensions, modifications and amendments thereto, in form and substance satisfactory to Agent, in its sole discretion, which, among other matters but not by way of limitation, authorizes the Borrowers to obtain credit, incur (or guaranty) Debt, and grant Liens under this Agreement and the other Loan Documents, as the case may be, provides for the super priority of Agent's, Collateral Agent's and Lenders' claims and authorizes the use of cash collateral.

"Frey Scientific" means the marketing unit that is a sub-segment of the Delta Business that offers a line of science supplies and equipment for k-12 classrooms and science labs, as well as lab design services and furniture.

"Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its business.

"Funding Obligor" has the meaning set forth in Section 9.4.

"Funds Flow Memorandum" means, with respect to any Revolving Loan proposed to be borrowed under this Agreement on the Closing Date, a listing of Persons to whom the proceeds of the Revolving Loan are to be paid, the amounts to be paid to each such Person, and the account information

and wiring instructions for each such Person; such listing to be agreed in writing between the Administrative Borrower and the Agent prior to the date such Revolving Loan is proposed to be made.

"FX and Currency Option Obligations" means any and all obligations of the Group Members, whether absolute or contingent and howsoever and whenever created, arising, evidenced or acquired (including all renewals, extensions and modifications thereof and substitutions therefor), under any and all agreements, devices or arrangements designed to protect any Group Member from variations in the comparative value of currencies, including foreign exchange purchase and future purchase transactions, currency options, currency swaps and cross currency rate swaps.

"GAAP" means generally accepted accounting principles as in effect in the United States and applied on a basis consistent with the accounting practices applied in the financial statements of the Group Members referred to in Section 4.5.

"Governmental Authority" means the government of the United States or any other nation, or of any political subdivision thereof, whether provincial, state or local, and any agency, authority, instrumentality, regulatory body, court, commission, board, bureau, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government, including any supra-national bodies such as the European Union or the European Central Bank or other comparable authority or agency, and any arbitration tribunal to which any Obligor is subject.

"Group Members" means the Obligors and each of their respective Subsidiaries.

"Guarantor Obligations" has the meaning set forth in Section 9.3(a).

"Guarantors" means, collectively, all of the Subsidiaries of the Administrative Borrower as of the date hereof that are not Borrowers, and each additional Subsidiary of the Administrative Borrower that executes and delivers a Guaranty Supplement in favor of the Agent and the Secured Parties either at the time of execution of this Agreement or at any time hereafter pursuant to Section 5.11, but excludes Premier School Agendas, Ltd. so long as it is a controlled foreign entity that is not disregarded for Tax purposes.

"Guaranty" means the guaranty by the Guarantors of the Obligations, as set forth in, and subject to the terms of, Article IX.

"Guaranty Supplement" has the meaning set forth in Section 5.8.

"Hazardous Substance" means any asbestos, urea-formaldehyde, polychlorinated biphenyls, nuclear fuel or material, chemical waste, radioactive material, explosives, known carcinogens, petroleum products and by-products and other dangerous, toxic or hazardous pollutants, contaminants, chemicals, materials or substances listed or identified in, or regulated by, any Environmental Laws.

"Health Business" means a segment of the Accelerated Learning Business that offers physical education and health solutions under the SPARK brand.

"Hedge Agreements" means the collective reference to Rate Hedging Obligations, Commodity Hedging Obligations, FX and Currency Option Obligations and other financial contracts.

"Indemnified Taxes" means Taxes other than Excluded Taxes.

"Indemnitees" has the meaning set forth in Section 10.5.

"Initial Borrowing" has the meaning set forth in Section 2.2(a).

"Insolvency Proceeding" means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its property; or (c) an assignment or trust mortgage for the benefit of creditors.

"Intellectual Property" means all now existing or hereafter acquired Copyrights, Patents, and Trademarks (as such terms are defined in the Security Agreement) of the Obligor.

"Intellectual Property Security Agreement" means each Copyright Security Agreement, Patent Security Agreement, and Trademark Security Agreement.

"Intercompany Debt" means Debt owing by a Group Member to one or more other Group Members.

"Intercompany Subordination and Payment Agreement" means the Intercompany Subordination and Payment Agreement executed by each Obligor and each Non-Obligor in favor of the Agent and the Lenders, in the form of Exhibit F hereto, as the same may be amended, supplemented or restated from time to time.

"Intercreditor Agreement" means the Intercreditor Agreement, dated as of the date hereof, executed by Wells Fargo Capital Finance, LLC, in its capacity as administrative agent and co-collateral agent under the ABL DIP Credit Documents, and the Agent.

"Interest Period" means each period beginning on the first day, and ending on the last day, of each fiscal month, provided that the initial Interest Period shall commence on the Closing Date and end on the last day of the fiscal month in which the Closing Date occurs.

"Interim Weekly Cash Flow Estimate" means a cash flow forecast for the then current fiscal week in substantially the same format as the thirteen-week cash flow forecast in the Approved Budget.

"Interim Order" means, collectively, the order of the Bankruptcy Court entered in the Chapter 11 Cases after an interim hearing (assuming satisfaction of the standards prescribed in Section 364 of the Bankruptcy Code and Bankruptcy Rule 4001 and other applicable law), which order is in effect and not stayed, together with all extensions, modifications, and amendments thereto, in form and substance satisfactory to Agent, in its sole discretion, which, among other matters but not by way of limitation, authorizes, on an interim basis, Borrowers to execute and perform under the terms of this Agreement and the other Loan Documents.

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

"IR Code" means the Internal Revenue Code of 1986, as amended from time to time, and the regulations promulgated thereunder.

"IRS" means the Internal Revenue Service of the United States.

"LC Obligations" means the sum of (a) the aggregate undrawn face amount of all issued and outstanding Letters of Credit and (b) the aggregate amount of all LC Reimbursement Obligations then outstanding.

"LC Reimbursement Obligation" means, for any Letter of Credit, the obligation of the Obligors or any of them to the issuer thereof, as and when matured, to pay (with proceeds of a ABL DIP Credit Loan or otherwise) all amounts drawn under such Letter of Credit.

"Lease" means a lease, license, concession, occupancy agreement or other agreement (written or oral, now or at any time in effect) which grants to any Person a possessory interest in, or the right to use, all or any part of a parcel of Real Property.

"Leased Real Property" means any leasehold interest in Real Property of any Obligor as lessee, sublessee or the like under any Lease.

"Lender" and "Lenders" have the meanings set forth in the Preamble to this Agreement.

"Letter of Credit" means each letter of credit issued pursuant to the ABL DIP Credit Documents.

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

"LIBOR Rate" means a rate per annum equal to the greatest of (a) 1.5% per annum, (b) solely upon the occurrence and during the continuance of an Event of Default, the Prime Rate, and (c) the offered rate for deposits in Dollars for a period of three months as determined by the Administrative Agent from the Reuters Screen LIBOR01 Page as of approximately 11:00 a.m., New York, New York time, on the first day of each Interest Period, or if such day is not a Business Day, then on the first Business Day in the applicable fiscal month in which such Interest Period commences (to be applicable for each day in such Interest Period), or the rate for such deposits reasonably determined by the Administrative Agent at such time based on such other published service of general application as shall be selected by the Agent for such purpose; provided, that if the LIBOR Rate is not determinable in the foregoing manner, the Administrative Agent may determine the rate based on rates offered to the Administrative Agent for deposits in Dollars in the interbank eurodollar market at such time for delivery on the first day of the Interest Period for the number of days comprised therein. If the Board of Governors of the Federal Reserve System (or any successor) prescribes a reserve percentage (the "Reserve Percentage") for "Eurocurrency liabilities" (as defined in Regulation D of the Federal Reserve Board, as amended), then the above definition of LIBOR Rate shall be the "Base LIBOR Rate", and "LIBOR Rate" shall mean: Base LIBOR Rate divided by (100% minus LIBOR Reserve Percentage). Each determination by the Administrative Agent of the applicable LIBOR Rate shall be conclusive and binding upon the parties hereto, in the absence of demonstrable error.

"LIBOR Reserve Percentage" means the Reserve Percentage adjusted by the Administrative Agent for expected changes in such reserve percentage during the applicable Interest Period.

“Lien” means any security interest, mortgage, pledge, lien, hypothecation, judgment lien or similar legal process, charge, encumbrance, title retention agreement or analogous instrument or device (including, without limitation, the interest of the lessors in connection with Capitalized Lease Liabilities and the interest of a vendor under any conditional sale or other title retention agreement).

“Loan Documents” means this Agreement, the Notes, the DIP Order, the Security Agreement, each Collateral Access Agreement, each Control Agreement, each Mortgage, each Intellectual Property Security Agreement, the Master Intercompany Note, the Intercompany Subordination and Payment Agreement, the Administrative Agent Fee Agreement, the Intercreditor Agreement, and all other loan documents now or hereafter given by any Group Member to the Administrative Agent, the Collateral Agent or the other Secured Parties in connection with the foregoing and/or in connection with the obligations of the Borrowers or the Guarantors under this Agreement.

“Loans” means the Revolving Loans and the Term Loans.

“Master Intercompany Note” means an omnibus promissory note evidencing all Intercompany Debt and pledged to the Collateral Agent, for the benefit of the Secured Parties, to secure the Obligations, all in form and substance satisfactory to the Administrative Agent.

“Material Adverse Effect” means, with respect to any event or circumstance, a material adverse effect on:

- (a) the business, financial condition, assets, liabilities, performance, operations or results of operations of (i) the Obligors taken as a whole, or (ii) the Accelerated Learning Business taken as a whole except for the filing, commencement and continuation of the Chapter 11 Cases and the events that customarily result from the filing, commencement and continuation of the Chapter 11 Cases (including any litigation resulting therefrom);
- (b) any material portion of the Collateral, taken as a whole, or any material portion of the Collateral in or attributable to the Accelerated Learning Business taken as a whole, or in either case the value or saleability thereof, or the Agent’s Liens on the Collateral, or the enforceability, perfection or priority (as required by the Loan Documents) of such Liens;
- (c) the ability of any Obligor to perform its obligations under the Loan Documents; or
- (d) the validity, enforceability or collectability of the Obligors’ respective obligations under any Loan Document, or the rights and remedies of the Administrative Agent, the Lenders and the other Secured Parties under any Loan Document.

Without limitation of the foregoing, it shall be a Material Adverse Effect if any Person who (x) is the CEO or CFO of the Administrative Borrower or the chief executive officer of the Accelerated Learning Business or the Educational Resources Business (or, in each case, an officer holding an equivalent title to any of the foregoing) or (y) otherwise exercises any direct control or influence over the management or management decisions of any Group Member, in each case, shall (i) be indicted or otherwise formally charged for or convicted of fraud, money laundering, embezzlement or any other felony, whether in the United States or in any foreign country or jurisdiction according to the Applicable Laws of such jurisdiction, or (ii) be or become a Blocked Person.

“Material Contract” means (i) each Revolving Credit Document, (ii) the agreements listed as items 1 and 2 in Part B of Schedule 4.11, and (iii) any contract or other arrangement to which any Group

Member is a party (other than the Loan Documents) for which breach, nonperformance, cancellation or failure to renew would be reasonably likely to have a Material Adverse Effect.

"Maturity Date" means June 30, 2013.

"Maximum ABL DIP Credit Amount" means \$175,000,000.

"Maximum Available Net Assets" has the meaning set forth in Section 9.4.

"MD&A" means a customary Management Discussion and Analysis relating to financial statements acceptable in scope and form to the Administrative Agent.

"Milestones" has the meaning set forth in Section 5.18.

"Multiemployer Plan" means a Pension Plan that is subject to the requirements of Subtitle E of Title IV of ERISA.

"Net Cash Proceeds" means, with respect to any Disposition by an Obligor of property or assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of an Obligor, in connection therewith after deducting therefrom only (a) the amount of any Debt secured by any Permitted Lien on any asset (other than (i) Debt owing to the Secured Parties under this Agreement or the other Loan Documents and (ii) Debt assumed by the purchaser of such asset) which is required to be, and is, and in the case of Debt under the ABL DIP Credit Documents is permitted by the Intercreditor Agreement to be, repaid in connection with such Disposition (in the case of deductions for repayment of Debt under the ABL DIP Credit Documents, only to the extent of the amount of such proceeds allocated to ABL Priority Collateral (as defined in, and in accordance with the terms of Section 3.5(c) of, the Intercreditor Agreement)), (b) reasonable fees, commissions, and expenses related thereto and required to be paid by an Obligor in connection with such Disposition, and (c) taxes paid or payable to any taxing authorities by an Obligor in connection with such Disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of an Obligor, and are properly attributable to such transaction.

"Non-Consenting Lender" has the meaning set forth in Section 10.2.

"Non-Controlled Accounts" means any deposit account or securities account of an Obligor that is not subject to a Control Agreement.

"Non-Obligor" means each Group Member that is not an Obligor.

"Notes" means the Revolving Notes and the Term Notes.

"Notice of Borrowing" means a notice by the Administrative Borrower to the Administrative Agent in the form of Exhibit D, which includes or specifies (A) the date of such proposed borrowing (which must be a Subsequent Revolving Funding Date), (B) the amount of the borrowing (which must be in an amount not to exceed the Availability or a greater amount agreed to in writing by the Administrative Agent and each Lender in their sole discretion), (C) the Interim Weekly Cash Flow Estimate for the then current fiscal week after giving effect to the funding of the requested Revolving Loan borrowing under this Agreement, which, among other things, must show that there is no ABL DIP Credit Agreement Availability projected to exist as of the end of the then current fiscal week (as reflected on the line item "Excess ABL Availability After Reserves and Minimum Liquidity" on such Interim Weekly Cash Flow

Estimate) and the projected amount of the Unrestricted Cash on hand of the Group Members as of the end of the then current fiscal week (as reflected on the line item "Unrestricted Cash Balance" on such Interim Weekly Cash Flow Estimate) shall not exceed \$1,000,000 , and (D) a certificate jointly from the chief financial officer and the chief restructuring officer of the Administrative Borrower certifying that, to the knowledge of the certifying officers, no Default or Event of Default has occurred and there is no fact, event or circumstance that could reasonably be expected to cause a Default or Event of Default.

"Notification" has the meaning set forth in Section 10.3(c).

"Obligations" means, collectively, all obligations and liabilities of the Borrowers to the Agent, the Lenders and the other Secured Parties under this Agreement and all other Loan Documents, including without limitation obligations to pay principal, interest, fees, premiums, expenses and other amounts of whatever nature, Agent Expenses, and any such obligations that arise after the filing of a petition by or against any Obligor under the Bankruptcy Code (or under any other bankruptcy or insolvency laws), regardless of whether allowed as a claim in the resulting proceeding, even if the obligations do not accrue because of the automatic stay of Section 362 of the Bankruptcy Code (or under any other bankruptcy or insolvency laws) or otherwise.

"Obligors" means, collectively, the Borrowers and the Guarantors.

"Other Science Products" means the marketing units that are sub-segments of the Delta Business that offer grade 6-12 learning systems that integrate textbooks, equipment and technology under the CPO Science brand, a supplementary science curriculum under the NEO/SCI and SCIS brands, and a math curriculum, supplementary products and manipulatives primarily under the ThinkMath brand.

"Other Taxes" has the meaning specified in Section 2.11(b).

"Owned Real Property" means any fee interest of any Obligor in Real Property.

"Participant" means a Person holding a Participation.

"Participation" means a participation in all or a portion of the rights of a Lender, granted pursuant to and in accordance with Section 8.13.

"Patent Security Agreement" means a Patent Security Agreement executed and delivered by an Obligor in favor of the Agent in substantially the form attached to the Security Agreement.

"Payee" has the meaning set forth in Section 2.11.

"PBGC" means the Pension Benefit Guaranty Corporation and any Person succeeding to any of its principal functions under ERISA.

"Pension Plan" means an ERISA Plan that is a "pension plan" (within the meaning of Section 3(2) of ERISA).

"Percentage" means, as to any Lender, (a) in reference to Revolving Loans, the amount of such Lender's Revolving Commitment divided by the Revolving Commitment Amount or, if any such Revolving Commitments have been terminated, the aggregate outstanding principal amount of such Lender's Revolving Loans divided by the aggregate outstanding principal amount of Revolving Loans of all Lenders, and (b) in reference to Term Loans, the amount of such Lender's Term Commitment divided by the aggregate principal amount of the Term Commitment of all Lenders or, if the Term Commitments



have been terminated, the aggregate outstanding principal amount of such Lender's Term Loans divided by the aggregate outstanding principal amount of Term Loans of all Lenders.

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

"Permitted Debt" means, provided that the incurrence thereof would not otherwise give rise to a Default under this Agreement:

- (a) Prepetition Indebtedness listed in Part A of Schedule 6.2;
- (b) Permitted PMM/Capital Lease Debt;
- (c) Intercompany Debt permitted under Section 6.3, evidenced by the Master Intercompany Note and subject to the Intercompany Subordination and Payment Agreement, and in the case of Intercompany Debt existing on the Closing Date, listed in Part B of Schedule 6.2;
- (d) the Term Loans, Revolving Loans and other Debt outstanding under this Agreement;
- (e) ABL DIP Credit Obligations outstanding from time to time under the ABL DIP Credit Agreement, in an aggregate amount not to exceed at any time the Maximum ABL DIP Credit Amount;
- (f) [Reserved];
- (g) [Reserved];
- (h) endorsement of instruments or other payment items for deposit;
- (i) Debt consisting of unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with dispositions of business units permitted by Section 6.5;
- (j) [Reserved];
- (k) Debt permitted to be incurred in accordance with the DIP Order;
- (l) [Reserved];
- (m) Debt incurred in the ordinary course of business in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or cash management services; and
- (n) Adequate Protection Obligations.

Notwithstanding the foregoing, Commodity Hedging Obligations shall not in any event be Permitted Debt.

“Permitted Discretion” means a determination made in the exercise of reasonable (from the perspective of a secured lender) credit judgment.

“Permitted Liens” means:

- (a) Liens in existence on the date of this Agreement and listed in Schedule 6.1;
- (b) Liens for taxes or assessments or other governmental charges to the extent not required to be paid by Section 5.4;
- (c) materialmen’s, warehousemen’s, merchants’, carriers’, worker’s, repairer’s, or other like Liens arising by operation of law in the ordinary course of business to the extent the obligations secured thereby are (i) not required to be paid by Section 5.4 and (ii) in an aggregate amount not to exceed \$8,000,000 at any time outstanding;
- (d) pledges or deposits to secure obligations under worker’s compensation laws, unemployment insurance and social security laws, or to secure the performance of bids, tenders, contracts (other than for the repayment of borrowed money) or leases, in the ordinary course of business and consistent with past practices, in an aggregate amount for such bids, tenders, contracts and true leases not to exceed \$500,000 at any time outstanding, or to secure statutory obligations incurred in the ordinary course of business and consistent with past practices in an aggregate amount for such statutory obligations not to exceed \$500,000 at any time outstanding, or to secure indemnity or other similar obligations incurred in the ordinary course of business and consistent with past practices in an amount not to exceed \$500,000 at any time outstanding, provided that the aggregate amount of all Liens permitted under this clause (d) shall not exceed \$1,000,000;
- (e) Permitted Real Estate Encumbrances;
- (f) Liens created under the (i) Loan Documents and (ii) the Prepetition Term Loan Documents;
- (g) Liens created under the (i) ABL DIP Credit Documents securing the ABL DIP Credit Obligations and that are subject to the Intercreditor Agreement and (ii) Prepetition ABL Credit Documents securing obligations in respect thereof and that are subject to the Prepetition Intercreditor Agreement;
- (h) judgment Liens provided that such judgment Lien has not given rise to an Event of Default;
- (i) the interests of lessors under operating leases and non-exclusive licensors under license agreements;
- (j) Liens securing Permitted PMM/Capital Lease Debt so long as (i) such Lien attaches only to the asset purchased or acquired in connection with the incurrence thereof, and the proceeds therefrom, and (ii) such Lien only secures the Debt that was incurred to acquire the asset purchased or acquired;
- (k) non-exclusive licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business and in existence on the Petition Date;

(l) rights of setoff or bankers' liens upon deposits of funds in favor of banks or other depository institutions, solely to the extent incurred in connection with the maintenance of such Deposit Accounts that are subject to Control Agreements in the ordinary course of business;

(m) [Reserved];

(n) [Reserved];

(o) Liens in favor of customs and revenue authorities arising on or prior to the Petition Date as a matter of law to secure payment of customs duties not yet delinquent in connection with the importation of goods; and

(p) Adequate Protection Obligations.

"Permitted PMM/Capital Lease Debt" means Capitalized Lease Liabilities and purchase money Debt with respect to fixed assets (i) outstanding on the Closing Date and set forth on Schedule 6.2 hereof and described as such on such Schedule and (ii) incurred after the Closing Date in an aggregate principal amount for all such Capitalized Lease Liabilities and purchase money Debt not to exceed \$500,000 outstanding at any time, provided that such Capitalized Lease Liabilities and purchase money Debt are entered into in connection with, and at the time of or no later than 20 days after, the acquisition by the Borrowers of equipment useful and used in the ordinary course of the Borrowers' business and the principal amount of such Capitalized Lease Liabilities and purchase money Debt when incurred does not exceed the purchase price of the property financed, and no such Capitalized Lease Liabilities and purchase money Debt shall be refinanced for a principal amount in excess of the principal amount refinanced.

"Permitted Real Estate Encumbrances" means, in the case of any Real Property, (a) any "Permitted Encumbrances" (as defined in the Mortgage relating to such Real Property) approved by the Agent, (b) Liens on such Real Property of the nature referred to in clauses (b), (f), (g) and (h) of the definition of Permitted Liens, and (c) easements (including without limitation reciprocal easement agreements), rights-of-way, restrictions, municipal, building and zoning ordinances and other similar encumbrances or other irregularities affecting such Real Property, that do not secure any Debt, and which were incurred in the ordinary course of business and (i) are described in the title insurance policy with respect to such Real Property delivered to the Administrative Agent prior to the date hereof, or (ii) in the opinion of the Administrative Agent, are not substantial in amount and do not in any case materially impair the use of such property in the operation of the business of any Group Member or impair the value of such Real Property.

"Permitted Senior Liens" means Permitted Liens (x) referred to in clauses (a), (b), (c), (e) and (j) of the definition of Permitted Liens and applicable to the Collateral (other than Equity Interests constituting Collateral, as to which there shall be no Permitted Senior Liens), to the extent, but only to the extent, having priority by mandatory provisions of applicable law, and (y) referred to in clause (g) of the definition of Permitted Liens and applicable only to the ABL DIP Credit Priority Collateral.

"Permitted Surety Bonds" means unsecured guarantees and reimbursement obligations incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations.

"Person" means any individual, corporation, partnership, limited liability company, joint venture, association, joint-stock company, trust, unincorporated organization or Governmental Authority.

"Petition Date" means January 28, 2013.

"Planner Business" means the business unit comprised of Premier Agendas, Inc. (excluding (on a basis consistent with the financial statements delivered by the Administrative Borrower to the Agent prior to the Closing Date) those operations relating to the Educational Resources Business in Canada), Premier School Agendas, Ltd. and Select Agendas, Corp.

"Platform" has the meaning set forth in Section 10.3(b).

"Postpetition" means the time period commencing immediately upon the filing of the Chapter 11 Cases.

"Prepetition" means the time period ending immediately prior to the filing of the Chapter 11 Cases.

"Prepetition ABL Agent" means Wells Fargo Capital Finance, LLC, in its capacity as administrative agent and collateral agent, under the Prepetition ABL Credit Agreement.

"Prepetition ABL Credit Agreement" means the Credit Agreement dated as of May 22, 2012, among the borrowers and guarantors named therein, the Prepetition ABL Credit Lenders and Wells Fargo Capital Finance, LLC, as administrative agent and co-collateral agent, as amended to date.

"Prepetition ABL Credit Documents" means the Prepetition ABL Credit Agreement and each other Loan Document (as defined therein).

"Prepetition ABL Credit Lenders" means all lenders party to the Prepetition ABL Credit Agreement.

"Prepetition Agents" means, collectively, the Prepetition ABL Agent and the Prepetition Term Loan Agent.

"Prepetition Debt Documents" means, collectively, the Prepetition ABL Credit Documents and the Prepetition Term Loan Documents.

"Prepetition Debt Holders" means, collectively, the Prepetition ABL Credit Lenders and the Prepetition Term Loan Lenders.

"Prepetition Indebtedness" means all Debt of the Borrowers outstanding on the Petition Date immediately prior to the filing of the Chapter 11 Cases other than Debt under the Prepetition ABL Credit Agreement and the Prepetition Term Loan Agreement.

"Prepetition Intercreditor Agreement" means the Intercreditor Agreement, dated as of May 22, 2012, executed by Wells Fargo Capital Finance, LLC in its capacity as Prepetition ABL Agent, and Bayside Finance LLC, in its capacity as Prepetition Term Loan Agent.

"Prepetition Secured Obligations" means the obligations in respect of the Prepetition ABL Credit Documents and the Prepetition Term Loan Documents.

"Prepetition Term Lenders" means the lenders party to the Prepetition Term Loan Agreement.

"Prepetition Term Loan Agent" means Bayside Finance, LLC, as administrative agent and collateral agent under the Prepetition Term Loan Documents.

"Prepetition Term Loan Agreement" means that certain Credit Agreement, dated as of May 22, 2012, by and among the borrowers and guarantors named therein, the Prepetition Term Lenders and the Prepetition Term Loan Agent, as amended to date.

"Prepetition Term Loan Documents" means the Prepetition Term Loan Agreement and each other Loan Document (as defined therein).

"Prepetition Term Loan Lenders" means the lenders party to the Prepetition Term Loan Agreement.

"Prime Rate" means, at any time, a rate per annum equal to the higher of (a) the rate last quoted by The Wall Street Journal as the "base rate on corporate loans posted by at least 75% of the nation's largest banks" in the United States or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as determined by the Administrative Agent) and (b) the sum of 0.5% per annum and the Federal Funds Rate.

"Product Development Expense" means, for any period, the capitalized cash investment on product development for such period.

"Professional Fees Line Items" has the meaning set forth in Section 6.31(d).

"Projections" has the meaning set forth in Section 4.5.

"Protective Advances" has the meaning set forth therefor in Section 2.17(a).

"Purchaser" means Bayside School Specialty, LLC, a Delaware limited liability company, and any of its designees, successors or assigns of its obligations under the Asset Purchase Agreement.

"Qualified Equity Interest" means and refers to any Equity Interests issued by School Specialty (and not by one or more of its Subsidiaries) that is not a Disqualified Equity Interest.

"Rate Hedging Obligations" means any and all obligations of the Group Members under (a) any and all agreements, devices or arrangements designed to protect any Group Member from the fluctuations of interest rates, including interest rate exchange agreements, interest rate cap or collar protection agreements, and interest rate options, puts and warrants, and (b) any and all cancellations, buy backs, reversals, terminations or assignments of any of the foregoing.

"Reading Business" means the literacy and intervention division of the Accelerated Learning Business.

"Real Property" means, collectively, all right, title and interest (including any leasehold, mineral or other estate) in and to any and all parcels of or interests in real property owned, leased or operated by any Person, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, all general intangibles and contract rights and other property and rights incidental to the ownership, lease or operation thereof.

"Receipts" has the meaning set forth in Section 5.12(b).

"Reconcilable Inclusion" means, with respect to the Accelerated Learning Business and the Planner Business, any inclusion within the Accelerated Learning Business or the Planner Business, respectively, of contracts, rights or other assets that (x) prior to such inclusion, were included in a different Business Segment, or (y) in the case of contracts, rights or other assets not previously included in a different Business Segment, are not consistent with the then-existing other contracts, rights and other assets of the Accelerated Learning Business or the Planner Business, respectively

"Related Person" means, with respect to any Person, each Affiliate of such Person and each director, officer, employee, agent, trustee, representative, attorney, accountant and each insurance, environmental, legal, financial and other advisor and other consultants and agents of or to such Person or any of its Affiliates, together with, if such Person is the Administrative Agent, each other Person or individual designated, nominated or otherwise mandated by or helping the Administrative Agent pursuant to and in accordance with Section 8.17 or any comparable provision of any Loan Document.

"Related Transactions" means, collectively, the execution and delivery of, and consummation of the transactions contemplated by, all ABL DIP Credit Documents and the payment of all related fees, costs and expenses.

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

"Remaining Obligor" has the meaning set forth in Section 9.4.

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

"Report" and "Reports" have the meanings specified in Section 8.20(a).

"Reportable Event" means a reportable event as that term is defined in Title IV of ERISA, and not as to which the PBGC has by regulation waived the requirement of Section 4043(a) of ERISA that it be notified within 30 days of the occurrence of such event, and with the exception of actions of general applicability by the Secretary of Labor under Section 110 of ERISA.

"Reporting Affiliate" means, with respect to any Person, a Person who is an Affiliate of such first Person under clauses (a), (b) or (c) of the definition of the term "Affiliate".

"Representatives" has the meaning set forth in Section 7.2.

"Required Lenders" means, at any time, the Lenders holding Loans and Commitments representing more than a majority of all Loans and unfunded Commitments outstanding at such time, provided that at any time that Bayside and its Affiliates hold in the aggregate at least 25% of the sum of all Loans and unfunded Commitments outstanding at such time, Required Lenders shall include Bayside and/or such Affiliates, as applicable.

"Required Payment" has the meaning set forth in Section 2.10(c).

"Requirements of Law" means, as to any Person, the organizational documents of such Person and any Applicable Law, or determination of a Governmental Authority having the force of law (but nevertheless including determinations of a Governmental Authority not having the force of law if responsible and prudent Persons engaged in a business similar to the business of the Borrower would observe such determinations), in each case applicable to or binding upon such Person or any of its business or property or to which such Person or any of its business or property is subject.

"Reserve Percentage" has the meaning set forth in the definition of "LIBOR Rate".

"Responsible Officer" means the chief executive officer or chief financial officer of the Administrative Borrower.

"Restricted Payment" means, in respect of any Obligor or any Subsidiary of any Obligor, to (a) declare or pay any dividend or make any other payment or distribution, directly or indirectly, on account of Equity Interests issued by such Obligor or Subsidiary (including any payment in connection with any merger or consolidation involving such Obligor or Subsidiary) or to the direct or indirect holders of Equity Interests issued by such Obligor or Subsidiary in their capacity as such (other than dividends or distributions payable in Equity Interests of such Obligor or Subsidiary that are not Disqualified Equity Interests), or (b) purchase, redeem, make any sinking fund or similar payment, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving such Obligor or Subsidiary) any Equity Interests issued by such Obligor or Subsidiary, or (c) make any payment to retire, or to obtain the surrender of, any outstanding warrants, options, or other rights to acquire Equity Interests of such Obligor or Subsidiary now or hereafter outstanding, or (d) make any payment or prepayment of principal of, premium, if any, or interest on, or redemption, purchase, retirement, defeasance (including in-substance or legal defeasance), sinking fund or similar payment with respect to, any Subordinated Debt.

"Restrictive Agreement" means an agreement (other than a Loan Document) that conditions or restricts the right of any Group Member to incur or repay borrowed money, to grant Liens on any assets, to declare or make Restricted Payments, to modify, extend or renew any agreement evidencing borrowed money, or to repay any Intercompany Debt.

"Return" has the meaning set forth in Section 2.12(b)(i).

"Revolving Commitments" means, with respect to each Lender, the amount of the Revolving Commitment set forth opposite such Lender's name on Schedule 1.1.1 hereof, or below such Lender's signature on an Assignment Certificate executed by such Lender, or as the context may require, the obligation of such Lender to make Revolving Loans, as contemplated by this Agreement.

"Revolving Commitment Amount" means the aggregate amount of the Revolving Commitments of all Lenders at any time, which amount shall be \$50,000,000.

"Revolving Loan" means a Loan made pursuant to Section 2.1(a) utilizing the Revolving Commitments.

"Revolving Note" means a promissory note of the Borrowers payable to a Lender evidencing the Revolving Commitment of such Lender (as such promissory note may be amended, extended or otherwise modified from time to time) and also means each promissory note accepted by such Lender from time to time in substitution therefor or in renewal thereof.

"Rolling Two Week Test Period" has the meaning set forth in Section 6.31(a).

"Sale/Leaseback Liabilities" means any amount or liability in respect of sale/leaseback or analogous transactions that is or is required under GAAP to be shown on the consolidated balance sheet of the Administrative Borrower and its consolidated Subsidiaries.

"Sale Motion" has the meaning set forth in the Asset Purchase Agreement.

"Sale Order" has the meaning set forth in the Asset Purchase Agreement.

"School Specialty" has the meaning set forth in the Preamble to this Agreement.

"Secured Parties" means the Lenders, the Administrative Agent, the Collateral Agent, each other Indemnitee and any other holder of any Obligation of any Obligor.

"Security Agreement" means each Security and Pledge Agreement (or similar agreement) executed by each Obligor in favor of the Agent and the Lenders, in the form of Exhibit E hereto duly completed for each Obligor, as the same may be amended, supplemented or restated from time to time.

"Seeds Divestiture" means the disposition by the Obligors of the Seeds of Science / Roots of Reading business in January 2012.

"Senior Debt" means Debt of the Group Members that has not been subordinated in right of payment to the Obligations in a manner in form and substance satisfactory to the Agent, including the ABL DIP Credit Obligations.

"Single Test Week" has the meaning set forth in Section 6.31(a).

"Stated Borrowing Base" has the meaning ascribed thereto in the Intercreditor Agreement (as in effect on the date hereof).

"Subordinated Debt" means unsecured Debt of the Obligors that is not Senior Debt, and that (a) is only guaranteed by the Guarantors, (b) is not subject to scheduled amortization, redemption, sinking fund or similar payment and does not have a final maturity, in each case, on or before the date that is six months after the Maturity Date, and (c) does not include any financial covenants or any covenant or agreement that is more restrictive or onerous on any Obligor in any material respect than any comparable covenant in this Agreement; and "Subordinated Debt" shall in any event include (x) the 2011 Convertible Subordinated Debentures, and (y) any other Debt of an Obligor incurred after the date hereof which by its terms is expressly subordinated to the Obligations in a manner and to an extent approved by the Administrative Agent.

"Subsequent Revolver Funding Date" means the second Business Day of each fiscal week commencing on the fiscal week immediately following the fiscal week in which the Initial Borrowing of the Revolving Loan is made.

"Subsidiary" of a Person means any corporation, limited liability company, partnership or other entity of which more than fifty percent (50%) of the outstanding equity or membership interests or shares of capital stock having general voting power under ordinary circumstances to elect a majority of the board of directors (or other governing body) of such entity, (irrespective of whether or not at the time stock or membership interests of any other class or classes shall have or might have voting power by reason of the happening of any contingency) is at the time directly or indirectly owned by such Person, by such Person and one or more Subsidiaries of such Person, or by one or more other Subsidiaries of such Person.



"Subsidiary Borrowers" has the meaning set forth in the Preamble to this Agreement.

"Survey" means, in respect of a particular parcel of Real Property, an American Land Title Association form survey, dated no earlier than 30 days prior to the issuance of the corresponding Mortgage Policy (or such other date as the Agent may approve in its Permitted Discretion), certified to the Agent and the issuer of the corresponding Mortgage Policy in a manner satisfactory to the Agent, by a land surveyor duly registered and licensed in the states in which the property described in such survey is located and acceptable to the Agent, which survey (i) shall show (x) all buildings and other improvements, (y) the location of any easements, rights of way, building set-back lines and other dimensional regulations and (z) such other matters as the Agent shall reasonably request and (ii) be sufficient for the issuer of the corresponding Mortgage Policy to remove all standard survey exceptions from the corresponding Mortgage Policy.

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

"Synthetic Lease Liabilities" means the monetary obligation of a Person under either: (a) a so-called synthetic, off-balance sheet or tax retention lease; or (b) an agreement for the use or possession of property creating obligations that do not appear on the balance sheet of such Person but which, upon the insolvency or bankruptcy of such Person, would be characterized as the indebtedness of such Person (without regard to accounting treatment). The amount of Synthetic Lease Liabilities shall be deemed to be the capitalized amount of the remaining lease payments under the relevant lease that would appear on a balance sheet of such Person prepared as of such date in accordance with GAAP if such lease were accounted for as a capital lease.

"Tax Returns" has the meaning set forth in Section 4.8.

"Taxes" has the meaning set forth in Section 2.11.

"Term and Revolving Loan Priority Collateral" has the meaning set forth in the Intercreditor Agreement.

"Term and Revolving Loan Priority Collateral Deposit Account" means an account maintained with JPMorgan Chase Bank, National Association, and subject to a first priority Lien, perfected through control pursuant to a Control Agreement, in favor of the Agent for the benefit of the Secured Parties into which shall be deposited all Net Cash Proceeds of all Dispositions of all property of the Obligor that is not ABL DIP Credit Priority Collateral.

"Term Commitment" means with respect to each Lender, the commitment of such Lender to make the Term Loan as set forth in 0.

"Term Loans" means the Loans by the Lenders to the Borrowers made pursuant to 0.

"Term Note" means a promissory note of the Borrowers payable to a Lender in the amount of such Lender's Term Loan (as such promissory note may be amended, extended or otherwise modified from time to time), evidencing the Term Loans, and also means each promissory note accepted by such Lender from time to time in substitution therefor or in renewal thereof.

"Termination Date" means the earliest to occur of (i) Maturity Date, (ii) the consummation of a sale of all or substantially all of the assets of the Borrowers under section 363 of the Bankruptcy Code, (iii) unless waived by the Lenders in their sole discretion, the occurrence of an Event of Default after taking into effect all applicable grace periods, (iv) the acceptance in writing by any of the Borrowers of

any offer or bid for the purchase of, directly or indirectly, all or substantially all of the assets of any of the Borrowers, or all of the equity of School Specialty or any Subsidiary thereof, to a buyer that does not provide for the actual payment in full of the Obligations by no later than the Maturity Date, or (v) unless waived by the Lenders in their sole discretion, the date that any of the Borrowers files a motion with the Bankruptcy Court for authority to proceed with the sale or liquidation of any of the Borrowers' (or any material portion of the assets or all of the equity of any Borrower) without the consent of the Lenders except pursuant to a proposed sale of all or substantially all of the Borrowers' assets, or all of the equity of School Specialty or any Subsidiary thereof, to a buyer that provides for the actual payment in full of the Obligations by no later than the Maturity Date. Upon the Termination Date, the Commitments shall terminate and all Loans and other Obligations shall be due and payable.

"Test Period" means the Single Test Week and the Rolling Two Week Test Period, commencing from the Single Test Week ending February 2, 2013.

"Total Outstanding ABL DIP Credit Amount" means, as of the date of determination, the sum of (a) the aggregate principal amount of all outstanding ABL DIP Credit Loans, plus (b) the amount of the LC Obligations.

"Trademark Security Agreement" means a Trademark Security Agreement executed and delivered by an Obligor in favor of the Agent in substantially the form attached to the Security Agreement.

"Treasury" means the United States Treasury.

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

"Unfinanced Capital Expenditures" means Capital Expenditures that are made from available cash of the Borrowers and not from the proceeds of Permitted PMM/Capital Lease Debt (including any Permitted PMM/Capital Lease Debt incurred after the acquisition of the asset acquired to directly or indirectly finance such acquisition), and are made in respect of assets that are not subject to any capital lease, and are not pledged to secure any purchase money Debt (whenever incurred).

"Unrestricted Cash" means, as of any date of determination, the aggregate amount of cash credited as of such date to all deposit accounts of the Group Members, which cash is subject to no restriction on its use, transfer or distribution pursuant to any Requirement of Law or contractual obligation (other than the Loan Documents, the ABL DIP Credit Documents, the Prepetition Term Loan Documents and the Prepetition ABL Credit Documents).

"Unused Line Fee" has the meaning set forth in Section 2.10(k).

"USA Patriot Act" has the meaning set forth in Section 10.16.

"Variance Report" means a weekly variance report to be provided by Borrowers to Administrative Agent within three Business Days after the end of each fiscal week reflecting actual cash receipts and disbursements for (i) the prior fiscal week, (ii) the period from the beginning of the fiscal month which includes such fiscal week to the end of such fiscal week, (iii) the applicable Test Period of the Administrative Borrower, and (iv) the period from the beginning of the fiscal week ending February 2, 2013 to the end of such Test Period, in each case, reflecting the amount variance and, in the case of clause (iii), percentage variance of actual receipts and disbursements (on a line item basis) from those receipts

and disbursements reflected in the most recently delivered thirteen-week cash flow forecast in the Approved Budget for the corresponding periods (or, in the case of clause (iv) and with respect to past periods that are not covered in the most recently delivered thirteen-week cash flow forecast in the Approved Budget, the latest thirteen-week cash flow forecast in the Approved Budget that covers any such past period), an explanation of the reason for any such variance and compliance or non-compliance with the requirements set forth in Section 6.31.

“Welfare Plan” means an ERISA Plan that is a “welfare plan” within the meaning of Section 3(1) of ERISA.

Section 1.2. Payments. The Administrative Agent may set up standards and procedures to determine or redetermine the equivalent in Dollars of any amount expressed in any currency other than Dollars and otherwise may, but shall not be obligated to, rely on any determination made by any Obligor or any Lender. Any such determination or redetermination by the Administrative Agent shall be conclusive and binding for all purposes, absent manifest error. No determination or redetermination by any Secured Party or Obligor and no other currency conversion shall change or release any obligation of any Obligor or of any Secured Party (other than the Administrative Agent and its Related Persons) under any Loan Document, each of which agrees to pay separately for any shortfall remaining after any conversion and payment of the amount as converted. The Administrative Agent may round up or down, and may set up appropriate mechanisms to round up or down, any amount hereunder to nearest higher or lower amounts and may determine reasonable *de minimis* payment thresholds.

## **ARTICLE II**

### **CREDIT FACILITIES**

#### Section 2.1. Revolving Commitments; Term Loan Refinancing.

(a) Revolving Loans. Subject to the terms and conditions herein set forth, each Lender hereby severally, but not jointly, agrees to make revolving loans in Dollars (each such loan, a “Revolving Loan”), not to exceed the Revolving Commitment Amount, to the Borrowers as follows: (i) an initial borrowing on the Closing Date, in the aggregate principal amount of \$15,000,000 (the “Initial Borrowing”) and (ii) additional borrowings on each Subsequent Revolver Funding Date in respect of which a Notice of Borrowing has been delivered in an amount not to exceed the Availability or a greater amount agreed to in writing by the Administrative Agent or each Lender in their sole discretion. The proceeds of such Revolving Loans shall be deposited into the Term and Revolving Loan Priority Collateral Deposit Account. The Revolving Loans and Revolving Loan proceeds shall be allocated to the Borrowers in the manner specified in the Notice of Borrowing therefor and used to pay (i) certain pre-petition expenses of the Borrowers and other costs authorized by the Bankruptcy Court in each case acceptable to the Lenders, (ii) Obligations hereunder and under all other Loan Documents (including, without limitation, interest, fees, expenses and other amounts of whatever nature and Agent Expenses) and (iii) post-petition operating expenses and to fund working capital of the Borrowers and other costs and expenses of administration of the Chapter 11 Cases (excluding wind-down expenses and payments with respect any management incentive plan unless agreed to in writing by the Lenders in their sole discretion), in each case subject to Availability and not to exceed the Revolving Commitment Amount. Notwithstanding the preceding, prior to the entry by the Bankruptcy Court of a Final Order, the Revolving Commitment Amount shall be limited to the sum of \$25,000,000, to the extent authorized by the Interim Order. For the avoidance of doubt, there shall not be more than one borrowing in any fiscal week.

Term Loans. Upon entry of the Final Order, all unpaid amounts in respect of loans under the Prepetition Term Loan Agreement held by Prepetition Term Loan Lenders, plus accrued and unpaid interest thereon through such date, unpaid fees, costs and expenses in respect thereof, including without limitation, any prepayment or make-whole payments payable as a result of the prepayment thereof and the Early Payment Fee (as defined in the Prepetition Term Loan Agreement) shall, pursuant to a cashless exchange, be refinanced and converted into Term Loans hereunder. Amounts repaid or prepaid in respect of the Term Loans may not be reborrowed.

Section 2.2. Procedures for Revolving Loans. The Initial Borrowing shall be funded on the Closing Date without further need for the Borrowers to take any action or submit any notice or request to the Administrative Agent or Lenders. To request a Revolving Loan to be funded on any Subsequent Revolver Funding Date, the Administrative Borrower shall submit a Notice of Borrowing to the Administrative Agent no later than 3:00 p.m. New York, New York time, on the Business Day prior to the proposed Subsequent Revolver Funding Date. The Notice of Borrowing shall be effective upon receipt by the Administrative Agent, shall be in writing by facsimile or electronic transmission (including by PDF). The requested borrowing shall be in an integral multiple of \$500,000 and not less than \$2,000,000. Promptly upon receipt of a Notice of Borrowing, the Administrative Agent shall advise each Lender of the proposed Revolving Loan. At or before 3:00 p.m., New York, New York time, on the date specified for the requested Revolving Loan, each Lender shall provide the Administrative Agent at the principal office of the Administrative Agent in Miami Florida with immediately available funds covering such Lender's Percentage of such Revolving Loan. Subject to satisfaction of the conditions precedent set forth in Article III with respect to such Revolving Loan, the Administrative Agent shall pay over such funds to the Administrative Borrower, by effecting a wire transfer to the Term and Revolving Loan Priority Collateral Deposit Account (or to such other Person and account as may be specified in the Funds Flow Memorandum), for the account of the applicable Borrower(s) specified in the Notice of Borrowing, prior to 4:00 p.m., New York, New York time, on the date of the requested Revolving Loan.

Section 2.3. Interest. The outstanding principal amount of each Loan shall bear interest from the date when made to the date repaid (provided that one full day's interest shall be payable for any Loan, or portion thereof, that is borrowed and repaid on the same day), accruing daily at a rate per annum equal to the applicable LIBOR Rate for each day during each Interest Period during which such Loan is outstanding, plus the Applicable Margin, adjusted for each applicable Interest Period, payable in arrears on the last day of the applicable Interest Period; provided, however, that upon the occurrence of an Event of Default (whether or not the Agent or any Lender shall have received or given notice thereof), the interest on the Loans from and after the date of the occurrence of such Event of Default shall be the rate per annum otherwise applicable from time to time to such Loans, plus three percent (3.0%) per annum (adjusting for any change in the applicable LIBOR Rate), payable in arrears on the last day of each fiscal month and on the last day of the applicable Interest Period and on demand from time to time (the "Default Rate"). The outstanding amount of all Obligations other than outstanding principal of Loans shall bear interest from the date such Obligations are due and payable, accruing daily at the rate applicable from time to time (calculated daily and not for any Interest Period) to the Loans (and shall bear interest at the Default Rate upon the occurrence of an Event of Default). Interest shall be computed on the basis of the actual number of days elapsed and a year consisting of 360 days. Each determination of an interest rate by the Administrative Agent shall be conclusive and binding on the Borrowers, the other Obligors and the Lenders in the absence of manifest error. All payments of interest shall be made in cash in Dollars in immediately available funds.

Section 2.4. Setting and Notice of Rates. The applicable LIBOR Rate for each Interest Period shall be determined by the Administrative Agent on the Closing Date, for the initial Interest Period, and on the first Business Day of each subsequent fiscal month, for each subsequent Interest Period (such rate to apply for each calendar day in such Interest Period), whereupon notice thereof (which may be by

telephone) shall be given by the Administrative Agent to the Administrative Borrower and each Lender. Each such determination of the applicable LIBOR Rate shall be conclusive and binding upon the parties hereto, in the absence of demonstrable and manifest error. The Administrative Agent, upon written request of the Administrative Borrower or any Lender, shall deliver to the Administrative Borrower or such requesting Lender a statement showing the computations or source used by the Administrative Agent in determining the applicable LIBOR Rate hereunder.

Section 2.5. Repayment of Loans; Representations; Joint and Several Liability.

(a) The Borrowers hereby unconditionally promise to pay to the Administrative Agent for itself and the account of each Lender in cash in Dollars in immediately available funds the then unpaid amount of each Loan and any other Obligations on the Maturity Date, or on such prior date as may be required by the terms of this Agreement (including, without limitation, upon the Termination Date).

(b) For all purposes of calculating whether payments of amounts payable under this Agreement have been received in a timely fashion on the date required therefor pursuant to this Agreement, including calculating interest on the applicable Obligations, funds received by the Administrative Agent from the Borrowers prior to 2:00 p.m. New York time will be deemed applied to the Obligations then due and payable as provided herein on the date of receipt by the Administrative Agent, provided that such funds are immediately available and notice thereof is received from the Administrative Borrower in accordance with the Administrative Agent's usual and customary practices as in effect from time to time and by 3:00 p.m. (New York time) on such date of receipt, and if not, then such amounts shall be deemed received and applied on the next succeeding Business Day after receipt of such immediately available funds by the Administrative Agent.

(c) The Borrowers shall be obligated to repay all Loans made under this Article II notwithstanding the failure of the Administrative Agent to provide any written request therefor or written confirmation thereof and notwithstanding the fact that the person requesting the same was not in fact authorized to do so. Any request for Revolving Loans under Section 2.2, whether written, telephonic, telecopy or otherwise, shall be deemed to be a representation by each Borrower that the borrowing conditions set forth in Section 3.1 and Section 3.2 have been met and all statements set forth in Section 3.1 and Section 3.2 are correct as of the time of the request.

(d) The Borrowers shall be jointly and severally liable for all amounts due from the Borrowers to the Administrative Agent, the Lenders and the other Secured Parties under this Agreement, regardless of which Borrower actually receives the Loans or other extensions of credit hereunder or the amount of such Loans received or the manner in which the Administrative Agent accounts for such Loans or other extensions of credit on its books and records. The Obligations with respect to Loans or other extensions of credit made to a Borrower, and the Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Loans or other extensions of credit made to the other Borrowers hereunder, shall be separate and distinct obligations, but all such other Obligations shall be primary obligations of all Borrowers. The Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Loans or other extensions of credit made to the other Borrowers hereunder shall, to the fullest extent permitted by law, be unconditional irrespective of (a) the validity or enforceability, avoidance or subordination of the Obligations of the other Borrowers or of any promissory note or other document evidencing all or any part of the Obligations of the other Borrowers, (b) the absence of any attempt to collect the Obligations from the other Borrowers, any Guarantor or any other security therefor, or the absence of any other action to

enforce the same, (c) the waiver, consent, extension, forbearance or granting of any indulgence by the Administrative Agent, Lenders or other Secured Parties with respect to any provisions of any agreement or instrument evidencing or governing the Obligations of the other Borrowers, or any part thereof, or any other agreement now or hereafter executed by the other Borrowers and delivered to the Administrative Agent, (d) the failure by the Administrative Agent, or any of the Lenders or other Secured Parties to take any steps to perfect and maintain its security interest in the Collateral or any part of it, or to preserve its or their rights and maintain its or their security or collateral for the Obligations of the other Borrowers, (e) the election of the Administrative Agent, or any of the Lenders or other Secured Parties in any proceeding instituted under the Bankruptcy Code, of the application of Section 1111(b)(2) of the Bankruptcy Code, (f) the disallowance of all or any portion of the claim(s) of the Administrative Agent, or any of the Lenders or other Secured Parties for the repayment of the Obligations of the other Borrowers under Section 502 of the Bankruptcy Code, or (g) any other circumstances which might constitute a legal or equitable discharge or defense of a Guarantor or of the other Borrowers, other than, with respect to a particular Lender, the willful misconduct, fraud or gross negligence of such Lender as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. With respect to the Obligations arising as a result of the joint and several liability of a Borrower hereunder with respect to Term Loans or other extensions of credit made to the other Borrowers hereunder, each Borrower and Guarantor waives, until the Obligations shall have been paid in full in immediately available funds and this Agreement shall have been terminated, any right to enforce any right of subrogation or any remedy which the Agent or any other Secured Party now has or may hereafter have against the Borrowers or any Guarantor, or any endorser or any other guarantor of all or any part of the Obligations, and any benefit of, and any right to participate in, any security or collateral given to the Agent or any other Secured Party. Upon any Event of Default and for so long as the same is continuing, the Agent may proceed directly and at once, without notice, against any Borrower or Guarantor, or against any one or more of them, to collect and recover the full amount, or any portion of the Obligations, without first proceeding against the other Borrowers or Guarantors or any other Person, or against any security or collateral for the Obligations. Each Borrower and Guarantor consents and agrees that the Agent and the Lenders and the other Secured Parties shall be under no obligation to marshal any assets in favor of the Borrower(s) or Guarantor(s) or against or in payment of any or all of the Obligations.

Section 2.6. Notes. Upon request by a Lender, such Lender's Term Loans may be evidenced by a Term Note. Upon request by a Lender, such Lender's Revolving Loan may be evidenced by a Revolving Note. The unpaid principal amount of each Note and all unpaid accrued interest thereon shall be payable on the Maturity Date, or on such prior date as may be required by the terms of this Agreement.

Section 2.7. Fees. The Borrowers shall pay to the Administrative Agent, for its own account (or to such other parties as the Administrative Agent may specify in writing), the fees specified in the Administrative Agent Fee Agreement in the amounts and on the dates specified therein, including without limitation a non-refundable agent's fee in the per annum amount of \$150,000, as further specified in the Administrative Agent Fee Agreement, payable in advance on the Closing Date and on each annual anniversary thereof, which amount shall be deemed fully earned when paid, whether or not this Agreement shall continue in effect, or any Loans or the Commitment shall remain in effect, for the entire year covered thereby.

Section 2.8. Use of Proceeds. The proceeds of all Revolving Loans shall be used by the Borrowers and their Subsidiaries solely in accordance with Section 2.1(a) and otherwise subject to the terms of this Agreement.

Section 2.9. Prepayments; Apportionment and Application.

(a) Mandatory Prepayments — Agent Election. The Borrowers shall be required to prepay the Obligations in accordance with Section 2.9(c) upon the following events in the amounts stated below, in each case within one (1) Business Day of the receipt thereof, unless such prepayment is waived in writing by the Administrative Agent with the consent of the Required Lenders:

(i) upon the receipt by any Group Member of the proceeds of a Carson-Dellosa Drag-Along Sale or any other voluntary or involuntary Disposition or spin-offs of property, divisions, business units, or business lines of a Group Member (including casualty losses or condemnations but excluding sales or dispositions which are permitted under clause (a) of Section 6.5 and dispositions of Inventory in the ordinary course of business), in an amount equal to (x) in the case of Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received in respect of ABL DIP Credit Priority Collateral by such Group Member in connection with such Dispositions or spin-offs, 100% of the amount thereof, and (y) in all other cases, in an amount equal to 100% of the Net Cash Proceeds (including condemnation awards and payments in lieu thereof) received by such Group Member in connection with such Dispositions or spin-offs; provided, that, nothing contained in this Section 2.9(a)(i) shall permit any Group Member to Dispose of any property other than in accordance with Section 6.5; and

(ii) upon the receipt by any Group Member of (1) any net proceeds of issuances of Debt for the refinancing of the Obligations, in an amount equal to 100% of such amounts, (2) net proceeds of issuances of Debt (other than Debt described in the preceding clause (1), and other Permitted Debt), in an amount equal to 50% of such amounts, (3) net proceeds of issuances of Equity Interests to any Person other than an Obligor, in an amount equal to 50% of such amounts, (4) Extraordinary Receipts attributable to or received in respect of Term and Revolving Loan Priority Collateral, in an amount equal to 100% of such amounts, (5) Extraordinary Receipts attributable to or received in respect of ABL DIP Credit Priority Collateral, in an amount equal to 0% of such amounts that are received prior to Payment in Full of the ABL Priority Debt (as each such term is defined in the Intercreditor Agreement) and 100% of such amounts that are received thereafter, (6) other Extraordinary Receipts, in an amount equal to 50% of such amounts, (7) any proceeds of business interruption insurance, in an amount equal to 50% of such amounts, (8) any proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case attributable to or received in respect of Term and Revolving Loan Priority Collateral, in an amount equal to 100% of such amounts, and (9) any proceeds of all other insurance in respect of loss or destruction of property and of the proceeds of all awards and other recoveries in respect of condemnation and analogous events in respect of property, in each case attributable to or received in respect of ABL DIP Credit Priority Collateral (calculated as determined in Section 5.2 of the Intercreditor Agreement), in an amount equal to 0% of such amounts that are received prior to Payment in Full of the ABL Priority Debt (as each such term is defined in the Intercreditor Agreement) and 100% of such amounts that are received thereafter (in each case in clauses (8) and (9) above, subject to exceptions for repairs and replacements effected within 60 days of receipt of such insurance proceeds or other award by any Group Member and costing up to \$200,000 per casualty event (or such greater amount as the Administrative Agent may approve, to the extent commercially reasonable)).

(b) Voluntary Prepayments. The Borrowers may prepay the outstanding principal amount of any Loan in whole at any time and/or in part, at par, from time to time, upon not less than thirty (30) days', and not more than sixty (60) days' prior written notice to the Administrative Agent, which notice shall be irrevocable once given, provided that (i) the Borrowers will remain liable for any breakage costs that may be owing pursuant to Section 2.13 after giving effect to such

prepayment, and (ii) each partial prepayment that is not of the entire outstanding amount of Loans shall be in an aggregate amount that is an integral multiple of \$1,000,000.

(c) Prepayments Generally. The following provisions shall apply to all prepayments under Section 2.9(a) and (b), to the extent specified below:

(i) any prepayment of the Term Loans or Revolving Loans under Section 2.9(a) and (b) shall be applied, subject to the commitment termination fee provided in Section 2.10(l), against, first, the outstanding Term Loans of each Lender pro rata according to each Lender's Percentage of such Loans, second, the outstanding Revolving Loans of each Lender pro rata according to each Lender's Percentage of such Loans with a permanent reduction of the Revolving Commitment;

(ii) at any time that an Application Event has occurred, prepayments under Section 2.9(a) shall be applied in accordance with the terms of Section 2.10(f)(ii);

(iii) [Reserved];

(iv) [Reserved]; and

(v) upon receipt by any Obligor of any Net Cash Proceeds, Extraordinary Receipts, net proceeds of issuances of Debt or Equity Interests, insurance proceeds or other awards payable in connection with the loss, destruction or condemnation of any property, or other amounts described in Section 2.9(a) (except clause (a)(i)(x)), the Administrative Borrower shall immediately deposit such funds, or cause such funds to be immediately deposited, in the Term and Revolving Loan Priority Collateral Deposit Account in an amount not less than the maximum amount that would be required to be applied to prepayment of the Obligations hereunder (assuming none of such proceeds would be elected to be used for any permitted repairs or replacements); the Administrative Borrower will cause such funds to be maintained in the Term and Revolving Loan Priority Collateral Deposit Account until applied to prepayment of the Obligations, or to a permitted repair or replacement, in accordance with the terms of this Section 2.9.

(d) No Violation of Intercreditor Agreement. Notwithstanding anything else to the contrary in this Agreement, the Borrowers shall not be permitted to make, and the Agent and the Lenders shall not be required to receive (and for the avoidance of doubt, if the Lenders do so receive, such receipt shall be subject to the Intercreditor Agreement), any voluntary prepayments of the Obligations (for the avoidance of doubt, including voluntary prepayments pursuant to Section 2.9(b) and also prepayments specified to be in such amounts as the Administrative Borrower may elect pursuant to Section 2.9(a)(i)(y)) that would contravene, or result in a breach of, any provision of the Intercreditor Agreement.

#### Section 2.10. Payments.

(a) Making of Payments. All payments and prepayments of principal, interest and other amounts due hereunder shall be made (unless otherwise expressly stated in this Agreement) to the Administrative Agent for the account of the Lenders pro rata according to their respective applicable Percentages. All payments to the Administrative Agent shall be made to the Administrative Agent at its office in Miami, Florida, not later than 2:00 p.m., New York, New York time, on the date due, in Dollars in immediately available funds, and funds received after that hour shall be deemed, for purposes of determining timeliness of payments and for all



purposes of computation of interest, to have been received by the Administrative Agent on the next following Business Day. Any payment or prepayment of principal shall be accompanied by accrued unpaid interest on such amount of principal paid or prepaid through the date of payment or prepayment, and, if applicable, additional compensation calculated in accordance with Section 2.13. The Administrative Agent shall remit to each Lender in immediately available funds its share of all such payments received by the Administrative Agent for the account of such Lender on the Business Day next succeeding the Business Day such payments are received by the Administrative Agent. If the Administrative Agent fails to remit any payment to any Lender when required hereby, the Administrative Agent shall pay interest on demand to that Lender for each day during the period commencing on the date such remittance was due until the date such remittance is made at an annual rate equal to the Federal Funds Rate for such day. All payments under Section 2.11, 2.12 or 2.13 shall be made by the Borrowers directly to each Lender entitled thereto.

(b) Effect of Payments. Each payment by the Borrowers to the Administrative Agent for the account of any Lender pursuant to Section 2.10(a) shall be deemed to constitute payment by the Borrowers directly to such Lender, provided, however, that in the event any such payment by the Borrowers to the Administrative Agent is required to be returned to the Borrowers for any reason whatsoever, then the Borrowers' obligation to such Lender with respect to such payment shall be deemed to be automatically reinstated.

(c) Distributions by Agent. Unless the Administrative Agent shall have been notified by a Lender or a Borrower prior to the date on which such Lender or Borrower are scheduled to make payment to the Administrative Agent of (in the case of a Lender) the proceeds of a Revolving Loan to be made by it hereunder or (in the case of a Borrower) a payment to the Administrative Agent for the account of one or more of the Lenders hereunder (such payment by a Lender or Borrower (as the case may be) being herein called a "Required Payment"), which notice shall be effective upon receipt, that it does not intend to make the Required Payment to the Administrative Agent, the Administrative Agent may assume that the Required Payment has been made and may, in reliance upon such assumption (but shall not be required to), make the amount thereof available to the intended recipient(s) on such date and, if such Lender or Borrower (as the case may be) has not in fact made the Required Payment to the Administrative Agent, the recipient(s) of such payment shall, on demand, repay to the Administrative Agent the amount so made available together with interest thereon for each day during the period commencing on the date such amount was so made available by the Administrative Agent until the date the Administrative Agent recovers such amount at a rate (i) equal to the Federal Funds Rate for such day, in the case of a Required Payment owing by a Lender, or (ii) equal to the applicable rate of interest as provided in this Agreement for the Loans (calculated daily and not in respect of any Interest Period), in the case of a Required Payment owing by a Borrower.

(d) Setoff. Each Borrower agrees that each Lender, subject to such Lender's sharing obligations set forth in Section 8.6, shall have all rights of setoff and bankers' lien provided by Applicable Law, and in addition thereto, each Borrower agrees that if at any time any Obligation is due and owing by such Borrower under this Agreement or the other Loan Documents to any Lender at a time when an Event of Default has occurred hereunder, any Lender may apply any and all balances, credits, and deposits, accounts or moneys of such Borrower then or thereafter in the possession of such Lender (excluding, however, any trust or escrow accounts held by such Borrower for the benefit of any third party) to the payment thereof.

(e) Due Date Extension. If any payment of principal of or interest on any Loan or any fees payable hereunder falls due on a day that is not a Business Day, then such due date shall be

extended to the next following Business Day, and (in the case of principal) additional interest shall accrue and be payable for the period of such extension.

(f) Apportionment and Application of Payments.

(i) So long as no Application Event has occurred, and except as otherwise expressly specified herein, all principal and interest payments shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses (other than fees or expenses that are for the Agent's separate account) shall be apportioned ratably among the Lenders to which a particular fee or expense relates. All payments to be made hereunder by the Borrowers shall (subject to the last sentence of Section 2.10(a) hereof) be remitted to the Administrative Agent and all (subject to Section 2.10(f)(iii) hereof) such payments, and all proceeds of Collateral received by the Agent, shall be applied, so long as no Application Event has occurred, to reduce the balance of the Loans and other Obligations outstanding and, thereafter, to the Administrative Borrower or such other Person entitled thereto under Applicable Law.

(ii) At any time that an Application Event has occurred, all payments remitted to the Administrative Agent and all proceeds of Collateral received by the Agent shall be applied as follows:

(A) first, to pay any Agent Expenses (including cost or expense reimbursements) or indemnities then due to the Agent under the Loan Documents, until paid in full;

(B) second, to pay any fees or premiums then due to the Agent under the Loan Documents until paid in full;

(C) third, to pay interest due in respect of all Protective Advances, pro rata, until paid in full;

(D) fourth, to pay the principal of all Protective Advances, pro rata, until paid in full;

(E) fifth, ratably to pay any fees then due to any of the Lenders under the Loan Documents until paid in full;

(F) sixth, ratably to pay interest due in respect of the Loans then outstanding until paid in full;

(G) seventh, ratably to pay the principal of all Loans then outstanding until paid in full;

(H) eighth, ratably to pay any other Obligations; and

(I) ninth, to the Administrative Borrower or such other Person entitled thereto under Applicable Law.

(iii) In each instance, so long as no Application Event has occurred, Section 2.10(f)(i) shall not apply to any payment made by the Borrowers to the Administrative Agent and specified

by the Administrative Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement.

(iv) For purposes of Section 2.10(f)(ii), "paid in full" means payment in cash in Dollars of all amounts owing under the Loan Documents according to the terms thereof, including loan fees, service fees, professional fees, interest (and specifically including interest accrued after the commencement of any Insolvency Proceeding), default interest, interest on interest and expense reimbursements, whether or not any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(v) In the event of a direct conflict between the priority provisions of this Section 2.10(f) and any other provision contained in any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.10(f) shall control and govern.

(g) Administrative Agent Fee. On the Closing Date the Administrative Borrower shall pay, or cause to be paid, to the Agent, as agency fees set forth in the Administrative Agent Fee Agreement.

(h) Closing Fee. On the Closing Date the Administrative Borrower shall pay, or cause to be paid, to Bayside Capital, Inc. a fee (the "Closing Fee") in the aggregate amount of \$500,000 pursuant to the Administrative Agent Fee Agreement. The Closing Fee shall be due and payable on the Closing Date and not refundable under any circumstances.

(i) [Reserved].

(j) Commitment Fees. On the Closing Date, Administrative Borrower shall pay or cause to be paid to the Lenders commitment fees (the "Commitment Fees") in the aggregate amount of \$1,000,000.

(k) Unused Line Fee. From and after the Closing Date, Administrative Borrower shall pay or cause to be paid to Administrative Agent an unused line fee (the "Unused Line Fee") equal to 1.00% of the average daily difference between (a) the Revolving Commitments and (b) the aggregate outstanding Revolving Loans payable monthly in arrears and on the Termination Date.

(l) Commitment Termination Fee. Unless the Revolving Loans are repaid and the Revolving Commitment terminated in connection with the Bayside Sale, Administrative Borrower shall pay or cause to be paid to Administrative Agent and Bayside Capital, Inc. a commitment termination fee (the "Commitment Termination Fee") in the aggregate amount of 3.00% of the Revolving Commitments upon termination of the Revolving Commitments, in whole or in part (for the avoidance of doubt, such commitment termination fee is payable upon the termination of the Revolving Commitments by the Administrative Agent and/or the Required Lenders in connection with any Event of Default or otherwise) with two-thirds of the Commitment Termination Fee payable to the Administrative Agent and one-third of the Commitment Termination Fee payable to Bayside Capital, Inc.

#### Section 2.11. Taxes.

(a) Payments. All payments made by the Borrowers to the Administrative Agent or any other Secured Party (herein any "Payee") under or in connection with this Agreement or the Term

Notes shall be made without any setoff or other counterclaim, and shall be free and clear of and without deduction or withholding for or on account of any present or future Taxes now or hereafter imposed by any Governmental Authority or other authority, except to the extent that any such deduction or withholding is compelled by law. As used herein, the term "Taxes" shall include all income, excise and other taxes of whatever nature (other than taxes generally assessed on the overall net income of a Payee by any Governmental Authority of the country, state or political subdivision in which such Payee is incorporated or in which the office through which such Payee is acting is located) as well as all levies, imposts, remittances, duties, charges, or fees of whatever nature. If a Borrower is compelled by law to make any deductions or withholdings on account of any Taxes (including any foreign withholding), such Borrower will:

(i) pay such additional amounts (including, without limitation, any penalties, interest or expenses) as may be necessary in order that the net amount received by the Payee after such deductions or withholdings (including any required deduction or withholding on such additional amounts) shall equal the amount the Payee would have received had no such deductions or withholdings been made; and

(ii) pay to the relevant authorities the full amount required to be so withheld or deducted (including with respect to such additional amounts); and

(iii) promptly forward to the Administrative Agent (for delivery to the appropriate Payee) an official receipt or other documentation satisfactory to the Administrative Agent evidencing such payment to such authorities.

If any Taxes otherwise payable by a Borrower pursuant to the foregoing are directly asserted against a Payee, such Payee may pay such taxes and such Borrower promptly shall reimburse such Payee to the full extent otherwise required under this Section 2.11.

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

(c) Indemnification by Borrowers. The Borrowers shall indemnify each Lender and the Administrative Agent for and hold it harmless against the full amount of any Indemnified Taxes and Other Taxes (including, without limitation, taxes of any kind imposed or asserted by any jurisdiction on amounts payable under this Section 2.11(c)) imposed on or paid or remitted by such Lender or the Administrative Agent (as the case may be) and any liability (including penalties, interest and reasonable expenses) arising therefrom or with respect thereto exclusive of any transfer taxes that the Purchaser will pay pursuant to the Asset Purchase Agreement. This indemnification shall be made within 30 days from the date such Lender or the Administrative Agent (as the case may be) makes written demand therefor with appropriate supporting documentation.

(d) Evidence of Payment. Within 30 days after the date of any payment of Taxes, the appropriate Borrower shall furnish to the Administrative Agent, at its address referred to in Section 10.3, the original or a certified copy of a receipt evidencing such payment to the extent such a receipt is issued therefor, or other written proof of payment thereof that is reasonably satisfactory to the Administrative Agent. In the case of any payment hereunder or under the Notes or any other documents to be delivered hereunder by or on behalf of a Borrower through an

account or branch outside the United States or by or on behalf of a Borrower by a payor that is not a United States person, if such Borrower determines that no Taxes are payable in respect thereof, such Borrower shall furnish, or shall cause such payor to furnish, to the Administrative Agent, at such address, an opinion of counsel reasonably acceptable to the Administrative Agent stating that such payment is exempt from Taxes. For purposes of this subsection (d) and subsection (e), the terms "United States" and "United States person" shall have the meanings specified in Section 7701 of the IR Code.

(e) Exemption from Withholding. Any Lender that is entitled to an exemption from or reduction of withholding Tax under the law of the jurisdiction in which the Borrower is located, or any treaty to which such jurisdiction is a party, with respect to payments under this Agreement shall deliver to the Borrower (with a copy to the Administrative Agent), to the extent such Lender is legally entitled to do so, at the time or times prescribed by applicable law, such properly completed and executed documentation prescribed by applicable law as may reasonably be requested by the Borrower to permit such payments to be made without such withholding Tax or at a reduced rate; provided that no Lender shall have any obligation under this paragraph (e) with respect to any withholding Tax imposed by any jurisdiction other than the United States if in the reasonable judgment of such Lender such compliance would subject such Lender to any material unreimbursed cost or expense or would otherwise be prejudicial to such Lender in any material respect.

(f) FATCA. If a payment made to a Lender hereunder or under any Loan Documents would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the IR Code, as applicable), such Lender shall deliver to the Company and the Administrative Agent at the time or times prescribed by law and at such time or times reasonably requested by the Company or the Administrative Agent such documentation prescribed by applicable law (including as prescribed by Section 1471(b)(3)(C)(i) of the IR Code) and such additional documentation reasonably requested by the Company or the Administrative Agent as may be necessary for the Company and the Administrative Agent to comply with their obligations under FATCA and to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. If any form or document referred to in this subsection (f) (other than FATCA documentation) requires the disclosure of information, other than information necessary to compute the tax payable and information required on the Closing Date by IRS Form W-8BEN or W-8ECI or the related certificate described above, that the Lender reasonably considers to be confidential, the Lender shall give notice thereof to the Company and shall not be obligated to include in such form or document such confidential information, except directly to a governmental authority or other Person subject to a reasonable confidentiality agreement. In addition, upon the written request of the Company or the Administrative Agent, each, Lender or the Administrative Agent shall provide any other certification, identification, information, documentation or other reporting requirement if (i) delivery thereof is required by a change in the law, regulation, administrative practice or any applicable tax treaty as a precondition to exemption from or a reduction in the rate of deduction or withholding; (ii) the Administrative Agent or Lender, as the case may be, is legally entitled to make delivery of such item; and (iii) delivery of such item will not result in material additional costs unless Company shall have agreed in writing to indemnify Lender or the Administrative Agent for such costs. Solely for the purposes of this subsection (f), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(g) Additional Amounts Payable. Any Lender claiming any additional amounts payable pursuant to this Section 2.11 agrees to use reasonable efforts (consistent with its internal policy

and legal and regulatory restrictions) to change the jurisdiction of its Applicable Lending Office if the making of such a change would avoid the need for, or reduce the amount of, any such additional amounts that may thereafter accrue and would not, in the judgment of such Lender, be otherwise disadvantageous to such Lender.

(h) Refund of Taxes. If any Lender or the Administrative Agent determines, in its sole discretion, that it has actually and finally received a refund of any Taxes paid or reimbursed by a Borrower pursuant to subsection (a) or (c) above in respect of payments under this Agreement or the other Loan Documents, such Lender or the Administrative Agent, as the case may be, shall pay to the applicable Borrower, with reasonable promptness following the date on which it actually receives such refund, an amount equal to such refund, net of all out-of-pocket expenses in securing such refund; provided, that the Company, upon the request of the Administrative Agent or such Lender, agrees to repay the amount paid (with interest and penalties) over to any Borrower to the Administrative Agent or such Lender in the event the Administrative Agent or such Lender is required to repay such amount to such governmental authority. This Section 2.11(h) shall not be construed to require the Administrative Agent or any Lender to make available its Tax returns (or any other information relating to its Taxes which it deems confidential) to the Borrowers or any other person.

(i) Indemnification of Administrative Agent. Each Lender shall severally indemnify the Administrative Agent, within 10 days after demand therefor, for (i) any Taxes or Other Taxes attributable to such Lender (but only to the extent that any Borrower has not already indemnified the Administrative Agent for such Taxes and Other Taxes and without limiting the obligation of the Borrowers to do so) and (ii) any taxes excluded from the definition of Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such taxes were correctly or legally imposed or asserted by the relevant governmental authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under any Loan Document or otherwise payable by the Administrative Agent to the Lender from any other source against any amount due to the Agent under this Section 2.11(i). For the avoidance of doubt, except as otherwise provided in Section 2.11(a), Section 2.11(b) and Section 2.11(c), nothing in this Section 2.11(i) shall result in any increase in the liability of any Borrower to any Lender or the Administrative Agent for Taxes or Other Taxes.

Section 2.12. Increased Costs; Capital Adequacy; Funding Exceptions.

(a) Increased Costs on LIBOR Rate. If Regulation D of the Board of Governors of the Federal Reserve System or after the date of this Agreement the adoption of any applicable law, rule or regulation, or any change in any existing law, or any change in the interpretation or administration thereof by any governmental authority, central bank or comparable agency charged with the interpretation or administration thereof, or compliance by a Lender with any request or directive (whether or not having the force of law) of any such authority, central bank or comparable agency, shall:

(i) subject a Lender to or cause the withdrawal or termination of any exemption previously granted to a Lender with respect to, any tax, duty or other charge with respect to its Loans or its obligation to make Loans, or shall change the basis of taxation of payments to a Lender of the principal of or interest under this Agreement in respect of its Loans or its obligation

to make Loans (except for changes in the rate of tax on the overall net income of a Lender imposed by the jurisdictions in which such Lender's principal executive office is located or in which such Lender is organized), or

(ii) impose, modify or deem applicable any reserve (including, without limitation, any reserve imposed by the Board of Governors of the Federal Reserve System, but excluding any reserve included in the determination of interest rates pursuant to Section 2.4), special deposit or similar requirement against assets of, deposits with or for the account of, or credit extended by, a Lender; or

(iii) impose on a Lender any other condition affecting its making, maintaining or funding of its Loans or its obligation to make Loans;

and the result of any of the foregoing is to increase the cost to an affected Lender of making or maintaining any Loan, or to reduce the amount of any sum received or receivable by such Lender under this Agreement or with respect to a Loan, then the affected Lender will notify the Administrative Borrower and the Administrative Agent of such increased cost and within fifteen (15) days after demand by such Lender (which demand shall be accompanied by a statement setting forth the basis of such demand) and the Borrowers shall pay to such Lender such additional amount or amounts as will compensate the Lender for such increased cost or such reduction. Each Lender will notify the Administrative Borrower of any event of which it has knowledge, occurring after the date hereof, which will entitle such Lender to compensation pursuant to this Section 2.12. The obligations of the Borrowers under this Section 2.12(a) shall survive any termination of this Agreement.

(b) Capital Adequacy. If a Lender determines at any time that such Lender's Return has been reduced as a result of any Capital Adequacy Rule Change, such Lender may require the Borrowers to pay to such Lender the amount necessary to restore such Lender's Return to what it would have been had there been no Capital Adequacy Rule Change. For purposes of this Section 2.12(b), the following definitions shall apply:

(i) "Return", for any fiscal quarter or shorter period, means the percentage determined by dividing (A) the sum of interest and ongoing fees earned by a Lender under this Agreement during such period by (B) the average capital such Lender is required to maintain during such period as a result of its being a party to this Agreement, as determined by such Lender based upon its total capital requirements and a reasonable attribution formula that takes account of the Capital Adequacy Rules then in effect. Return may be calculated for a Lender for each fiscal quarter and for the shorter period between the end of a fiscal quarter and the date of termination in whole of this Agreement.

(ii) "Capital Adequacy Rule" means any law, rule, regulation or guideline regarding capital adequacy that applies to a Lender, or the interpretation thereof by any Governmental Authority. Capital Adequacy Rules include rules requiring financial institutions to maintain total capital in amounts based upon percentages of outstanding loans, binding loan commitments and letters of credit.

(iii) "Capital Adequacy Rule Change" means any change in any Capital Adequacy Rule occurring after the date of this Agreement, but does not include any changes in applicable requirements that at the date hereof are scheduled to take place under the existing Capital Adequacy Rules or any increases in the capital that a Lender is required to maintain to the extent that the increases are required due to a regulatory authority's assessment of such Lender's financial condition.

The initial notice sent by a Lender shall be sent after such Lender learns that its Return has been reduced, shall include a demand for payment of the amount necessary to restore such Lender's Return through and including the quarter in which the notice is sent, and shall state in reasonable detail the cause for the reduction in such Lender's Return and such Lender's calculation of the amount of such reduction. Thereafter, a Lender may send a new notice during each fiscal quarter setting forth the calculation of the reduced Return for that quarter and including a demand for payment of the amount necessary to restore such Lender's Return for that quarter. A Lender's calculation in any such notice shall be conclusive and binding absent demonstrable error.

(c) Basis for Determining Interest Rate Inadequate or Unfair. If with respect to any Interest Period:

(i) the Administrative Agent determines, or the Required Lenders determine and advise the Administrative Agent (which determination shall be binding and conclusive on all parties), that deposits in Dollars (in the applicable amounts) are not being offered in the London interbank eurodollar market for such Interest Period; or

(ii) the Administrative Agent otherwise determines, or the Required Lenders determine and advise the Administrative Agent (which determination shall be binding and conclusive on all parties), that by reason of circumstances affecting the London interbank eurodollar market adequate and reasonable means do not exist for ascertaining the applicable LIBOR Rate; or

(iii) the Administrative Agent otherwise determines, or the Required Lenders determine and advise the Administrative Agent (which determination shall be binding and conclusive on all parties), that the LIBOR Rate as determined by the Administrative Agent will not adequately and fairly reflect the cost to the Lenders of maintaining or funding a Loan for such Interest Period, or that the making or funding of Loans has become impracticable as a result of an event occurring after the date of this Agreement which in the opinion of such Lenders materially affects such Loans;

then the Administrative Agent shall promptly notify the affected parties and the Administrative Borrower shall enter into good faith negotiations with each affected Lender in order to determine an alternate method to determine the LIBOR Rate for such Lender.

(d) Illegality. In the event that any change in (including the adoption of any new) Applicable Laws, or any change in the interpretation of Applicable Laws by any Governmental Authority, including any central bank or comparable agency or any other regulatory body, charged with the interpretation, implementation or administration thereof, or compliance by a Lender with any request or directive (whether or not having the force of law) of any such Governmental Authority, including any central bank or comparable agency or other regulatory body, should make it unlawful or, in the good faith judgment of the affected Lender, shall raise a substantial question as to whether it is unlawful, for such Lender to make, maintain or fund Loans, then (i) the affected Lender shall promptly notify the Administrative Borrower and the Administrative Agent, (ii) the obligation of the affected Lender to make Loans shall, upon the effectiveness of such event, be suspended for the duration of such unlawfulness, and (iii) the Borrowers shall prepay all applicable Loans of such Lender, either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Loans. Upon any such prepayment or conversion, the Borrowers shall also pay accrued interest on the amount so prepaid.



(e) Procedures to Mitigate. If circumstances arise in respect of any Lender which would, or would upon the giving of notice, result in any liability of the Borrowers under Section 2.11 or this Section 2.12 then, without in any way limiting, reducing or otherwise qualifying the Borrowers' obligations under Section 2.11 or this Section 2.12, such Lender shall promptly, upon becoming aware of the same, notify the Administrative Agent and the Administrative Borrower thereof and shall, in consultation with the Administrative Agent and the Administrative Borrower and to the extent that it can do so without, in its reasonable judgment, disadvantaging itself, take such reasonable steps as may be available to it to mitigate the effects of such circumstances (including, without limitation, the designation of an alternate office or the transfer of its Loans to another office). If and so long as a Lender has been unable to take, or has not taken, steps reasonably acceptable to the Administrative Borrower and the Administrative Agent to mitigate the effect of the circumstances in question, such Lender shall be obliged, at the request of the Administrative Borrower or the Administrative Agent, to assign all its rights and obligations hereunder to another Person designated by the Administrative Agent, or the Administrative Borrower with the approval of the Administrative Agent (which shall not be unreasonably withheld or delayed), and willing to enter this Agreement in place of such Lender; provided that such Person satisfies all of the requirements of this Agreement, including, but not limited to, providing the forms and documents required by Section 8.12 and any such Person shall cover all costs incurred in connection with effecting such replacement.

Section 2.13. Funding Losses. Each Borrower hereby agrees that upon demand by any Lender (which demand shall be accompanied by a statement setting forth the basis for the calculations of the amount being claimed) such Borrower will indemnify such Lender against any loss or expense which such Lender may have sustained or incurred (including, without limitation, any net loss or expense incurred by reason of the liquidation or reemployment of deposits or other funds acquired by such Lender to fund or maintain Loans) or which such Lender may be deemed to have sustained or incurred, as reasonably determined by such Lender, (i) as a consequence of any failure by the Borrowers to make any payment when due of any amount due hereunder in connection with any Loans, or (ii) due to any failure of the Borrowers to borrow on a date specified therefor in a Notice of Borrowing. For this purpose, all notices under Section 2.2 shall be deemed to be irrevocable.

Section 2.14. Right of Lenders to Fund through Other Offices. Each Lender, if it so elects, may fulfill its agreements hereunder with respect to any Loan by causing a foreign branch or Affiliate of such Lender to make such Loan; provided, that in such event the obligation of the Borrowers to repay such Loan shall nevertheless be to such Lender and such Loan shall be deemed held by such Lender for the account of such branch or Affiliate.

Section 2.15. Discretion of Lenders as to Manner of Funding. Notwithstanding any provision of this Agreement to the contrary, each Lender shall be entitled to fund and maintain all or any part of its Loans in any manner it deems fit, it being understood, however, that for the purposes of this Agreement (specifically including, without limitation, Section 2.13 hereof) all determinations hereunder shall be made as if each Lender had actually funded and maintained each Loan during each Interest Period for such Loan through the purchase of deposits having a maturity corresponding to such Interest Period and bearing an interest rate equal to the appropriate LIBOR Rate for such Interest Period.

Section 2.16. Conclusiveness of Statements; Survival of Provisions. Determinations and statements of a Lender pursuant to Section 2.11, 2.12, or 2.13 shall be conclusive absent demonstrable error. Each Lender may use reasonable averaging and attribution methods in determining compensation pursuant to such Sections 2.11, 2.12, or 2.13 and the provisions of Sections 2.11, 2.12, and 2.13 and the obligations of the Borrowers thereunder shall survive termination of this Agreement.

Section 2.17. Protective Advances.

(a) The Administrative Agent hereby is authorized by each Borrower and the Lenders (but is not obligated to), from time to time in the Administrative Agent's sole discretion, (i) after the occurrence of a Default or an Event of Default, or (ii) at any time that any of the other applicable conditions precedent set forth in Article III are not satisfied, to make advances to the Borrowers on behalf of the Lenders that the Administrative Agent, in its Permitted Discretion, deems necessary or desirable (A) to preserve or protect the Collateral, or any portion thereof, (B) to enhance the likelihood of repayment of the Obligations, or (C) to pay any other amount chargeable to the Borrowers pursuant to the terms of this Agreement, including Agent Expenses (any of the advances described in this Section 2.17(a) shall be referred to as "Protective Advances"), which Protective Advances shall bear interest at all times at the same rate as would be applicable during the continuation of an Event of Default to the Loans, whether or not an Event of Default then exists.

(b) All payments on the Protective Advances shall be payable to the Administrative Agent solely for its own account. The principal of and accrued unpaid interest on the Protective Advances shall be payable on demand from time to time, and shall be secured by the Agent's Liens, not be subject to the pro rata payment provisions of this Agreement, and constitute Obligations hereunder. The provisions of this Section 2.17 are for the exclusive benefit of the Administrative Agent and the Lenders, and are not intended to benefit the Obligors in any way, and in no event shall a Borrower or any other Obligor be deemed a beneficiary of this Section nor authorized to enforce any of its terms.

Section 2.18. Maximum Interest. Notwithstanding anything to the contrary contained in any Loan Document, the interest paid or agreed to be paid under the Loan Documents shall not exceed the maximum rate of non-usurious interest permitted by Applicable Law (the "maximum rate"). If any Secured Party shall receive interest hereunder in an amount that exceeds the maximum rate, the excess interest shall be applied to the principal of the Obligations or, if it exceeds such unpaid principal, refunded to the Administrative Borrower. In determining whether the interest contracted for, charged or received by a Secured Party exceeds the maximum rate, such Person may, to the extent permitted by Applicable Law, (a) characterize any payment that is not principal as an expense, fee or premium rather than interest; (b) exclude voluntary prepayments and the effects thereof; and (c) amortize, prorate, allocate and spread in equal or unequal parts the total amount of interest throughout the contemplated term of the Obligations hereunder.

Section 2.19. Defaulting Lenders. The failure of any Lender to fund a Loan or to otherwise perform its obligations hereunder (any Lender who fails to fund a Loan or to otherwise perform its obligations hereunder, a "Defaulting Lender") shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender. The Lenders and the Administrative Agent agree (which agreement is solely among them, and not for the benefit of or enforceable by any Borrower or other Group Member) that, solely for purposes of determining a Defaulting Lender's right to vote on matters relating to the Loan Documents and to share in payments, fees and Collateral proceeds thereunder, a Defaulting Lender shall not be deemed to be a "Lender" until all its defaulted obligations have been cured.

**ARTICLE III**  
**CONDITIONS OF LENDING**

Section 3.1. Conditions Precedent to the Closing Date. The obligation of each Lender to make Loans on the Closing Date hereunder is subject to the satisfaction or due waiver of each of the

following conditions precedent, in each case in form and substance satisfactory to the Administrative Agent:

(a) Certain Documents. The Administrative Agent shall have received on or prior to the Closing Date each of the following, each (in the case of clauses (i) through (iii), and (v) through (ix)) dated the Closing Date unless otherwise agreed by the Administrative Agent, in form and substance reasonably satisfactory to the Administrative Agent:

(i) This Agreement, the Notes (if requested by any Lender) and each of the other Loan Documents, including, without limitation, the Security Agreement, the Intellectual Property Security Agreements, the Intercompany Subordination and Payment Agreement, in each case fully executed and delivered by all parties thereto;

(ii) Copies of all ABL DIP Credit Documents, including copies of all executed counterparts thereof where applicable;

(iii) A certificate or certificates of the Secretary or an Assistant Secretary of each Obligor, attesting to and attaching (i) a complete and correct copy of the corporate resolution of such Person authorizing the execution, delivery and performance of each Loan Document to which such Person is a party, certified as of the Closing Date as being in full force and effect without modification, amendment or revocation, (ii) the names, titles and signatures of the officers of such Person authorized to execute and deliver Loan Documents, (iii) a complete and correct copy of each Constituent Document of such Person (as in effect on the Closing Date) that is on file with any Governmental Authority in the jurisdiction, of organization of such Person, certified as of a recent date by such Governmental Authority, together with, if applicable, certificates attesting to the good standing of such Person in such jurisdiction and (iv) a complete and correct copy of each other Constituent Document of such Person (as in effect on the Closing Date);

(iv) [Reserved];

(v) A certificate of a Responsible Officer to the effect that each condition set forth in this Section 3.1 and Section 3.2 has been satisfied;

(vi) The executed and favorable legal opinions of counsel for the Obligors addressing such matters as the Administrative Agent may reasonably request;

(vii) Evidence of general liability insurance, property, casualty and business interruption insurance, product liability insurance, directors' and officers' liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation, in each case with respect to the insurance coverage required by Section 5.6, together with additional insured / lender's loss payee endorsements in favor of the Collateral Agent;

(viii) Copies of each of the Material Contracts, in form and substance satisfactory to the Administrative Agent in its sole discretion; and

(ix) Updates or modifications to the projected financial statements of the Borrowers and other Obligors previously received by the Administrative Agent, in each case in form and substance reasonably satisfactory to the Administrative Agent;

(b) The absence (i) since December 29, 2012, of any event or circumstance, including any event or circumstance generally affecting the industry or industries in which the Obligors operate, that could reasonably be expected to have a Material Adverse Effect, other than matters described in the Administrative Borrower's annual report on form 10K for the period ended April 30, 2012, or quarterly reports on form 10Q for the periods ending July 28, 2012 and October 27, 2012, which have been previously delivered to the Administrative Agent, and (ii) of any material pending or threatened litigation, proceeding, bankruptcy or insolvency, injunction, order or claims with respect to any Group Member, except as specified on Schedule 4.6.

(c) The absence, as of the Closing Date and after giving effect to all of the transactions contemplated hereby, including, without limitation, the payment of all Closing Date fees and expenses, of any Default or Event of Default under this Agreement or any default or violation (howsoever defined) under any other Material Contract of any Group Member (except for the filing, commencement and continuation of the Chapter 11 Cases and the events that customarily result from the filing, commencement and continuation of the Chapter 11 Cases (including any litigation resulting therefrom)).

(d) The Administrative Agent shall be satisfied that, subject only to the funding of any Revolving Loans hereunder, (i) the proceeds of the Revolving Loans are being applied in accordance with the provisions of Section 2.8, and (ii) all Related Transactions shall have been consummated or shall be consummated simultaneously with the closing of the transactions contemplated hereunder.

(e) The Administrative Agent shall be satisfied with the corporate structure, ultimate ownership and management of the Obligors (it being agreed that the current structure corporate structure and ultimate ownership as disclosed by the Administrative Borrower and its Affiliates to the Administrative Agent on or prior to January 28, 2013, is acceptable) and the management of the Obligors (it being agreed that the current management of the Obligors as disclosed by the Administrative Borrower and its Affiliates to the Administrative Agent on or prior to January 28, 2013, is acceptable).

(f) Appropriate UCC financing statements, Intellectual Property records and other filings shall have been duly filed (or, in the case of Intellectual Property records, shall have been prepared for filing in form and substance satisfactory to the Administrative Agent and executed and delivered to the Administrative Agent) in such office or offices as may be necessary or, in the opinion of the Administrative Agent, desirable to perfect the Collateral Agent's first priority Liens in and to the Term and Revolving Loan Priority Collateral and second priority Liens in and to the ABL DIP Credit Priority Collateral, and the Administrative Agent shall have received searches reflecting the filing of all such financing statements, records and filings (except for such Intellectual Property records as have been prepared and delivered to the Administrative Agent but not filed) and the absence of any Liens other than Permitted Liens and Liens for which the Administrative Agent has received releases, terminations, and such other documents as the Administrative Agent may, in its sole discretion, request to evidence and effectuate the termination and release of such Liens and the termination of the financing arrangements that any Borrower or any other Obligor may currently have in place giving rise to such Liens. The Collateral Agent, for the benefit of itself and the Secured Parties, shall hold perfected and first priority Liens in and to the Term and Revolving Loan Priority Collateral and perfected second priority Liens in and to the ABL DIP Credit Priority Collateral, including (i) all personal property other than titled vehicles with an aggregate fair market value not to exceed \$200,000, and (ii) all fee owned Real Property owned by the Obligors, and the Administrative Agent shall have received such evidence of the foregoing as it requires.

(g) Payment by the Borrowers, on or prior to the Closing Date, of all fees and expenses owing and payable to the Agent, the Lenders and their respective Affiliates as of the Closing Date (including the Closing Fee) and, without duplication, all fees, expenses and other amounts payable set forth herein and costs and expenses incurred by the Agent, the Lenders, the Borrowers and/or their respective Affiliates in connection with the transactions contemplated hereby.

(h) [Reserved].

(i) Each Obligor shall have received all consents and authorizations required pursuant to any Material Contract with any other Person and shall have obtained all Permits of, and effected all notices to and filings with, any Governmental Authority, in each case, as may be necessary (i) in connection with continued operation of the business conducted by each Obligor in substantially the same manner as conducted prior to the Closing Date, or (ii) in connection with the consummation of the transactions contemplated in any Loan Document or Revolving Credit Document (including the Related Transactions). Each such consent, authorization and Permit shall be in full force and effect. All applicable waiting periods shall have expired without any action being taken or threatened by any competent authority or other applicable Person that would restrain, prevent or otherwise impose adverse conditions on the transactions contemplated by the Loan Documents or the ABL DIP Credit Documents or the Related Transactions. No action, request for stay, petition for review or rehearing, reconsideration, or appeal with respect to any of the foregoing shall be pending, and the time for any applicable Governmental Authority or other Person to take action to set aside its consent on its own motion shall have expired.

(j) The materials furnished to the Administrative Agent by the Obligors prior to and on the Closing Date, taken as a whole, shall have contained no misstatement of material fact and shall have omitted no material fact required to be stated in order to make the statements therein contained not misleading in light of the circumstances under which made. The Administrative Agent shall be reasonably satisfied that any financial statements and other financial information delivered to it by the Obligors fairly present the business and financial condition of the Obligors.

(k) The Administrative Agent shall have received all documentation and other information required by bank regulatory authorities under applicable "know-your-customer" and anti-money laundering rules and regulations, including the USA Patriot Act.

(l) An Acceptable Cash Management System shall have been entered into, and the Cash Management Accounts shall have been established, and all documentation relating to the foregoing shall have been executed and delivered to the Administrative Agent by all parties thereto.

(m) [Reserved]

(n) The Borrowers and the Administrative Agent shall have agreed upon an Approved Budget.

(o) The Borrowers shall have confirmed that the Prepetition Indebtedness (other than Intercompany Debt listed on Schedule 6.2 hereto) is not greater than \$200,000,000 and that the aggregate outstanding principal amount under the Prepetition Term Loan Agreement is not less than \$92,054,001.06.

(p) The Prepetition ABL Credit Lenders will have entered into ABL DIP Credit Documents acceptable to the Administrative Agent to provide the Borrowers with DIP financing that when combined with the obligations in respect of the Prepetition ABL Credit Documents will not exceed \$175,000,000.

(q) The Chapter 11 Cases shall have been commenced and all of the "first day orders" and all related pleadings to be entered at the time of commencement of the Chapter 11 Cases or shortly thereafter shall have been provided in advance to the Administrative Agent and shall be satisfactory in form and substance to the Administrative Agent in its sole discretion.

(r) Such other items as the Administrative Agent or the Required Lenders shall reasonably require.

Section 3.2. Additional Conditions Precedent to each Loan. The obligation of each Lender to make a Loan on or after the Closing Date, shall be subject to the satisfaction of each of the following further conditions precedent as of such date:

(a) the representations and warranties contained in Article IV hereof shall be true and correct in all material respects (without duplication of any materiality qualifier contained herein) as though made on and as of such date (and each Borrower shall be deemed to have so made each such representation and warranty on and as of such date).

(b) no event shall have occurred, or would result from the making of the Loans or the ABL DIP Credit Loans or consummation of the transactions contemplated by the Loan Documents and the ABL DIP Credit Documents or the Related Transactions that, with the giving of notice or lapse of time or both, if required, constitutes, or would give rise to, a Default or an Event of Default.

(c) With respect to the making of a Revolving Loan (except with respect to the Initial Borrowing on the Closing Date), the Administrative Agent shall have timely received a Notice of Borrowing in compliance with the terms hereof and a certificate as to Availability.

(d) no injunction, writ, judgment, decree, restraining order, or other order of any nature shall have been issued and remain in force by any Governmental Authority or arbitrator against any Obligor, the Agent, any Lender or the ABL DIP Agent or any ABL DIP Credit Lender or letter of credit issuing bank prohibiting or restraining, directly or indirectly, and no other legal bar shall exist directly or indirectly to, the making of such Loans or the ABL DIP Credit Loans or the consummation of the Related Transactions.

(e) With respect to the making of a Revolving Loan (other than the Initial Borrowing on the Closing Date), there shall be no ABL DIP Credit Agreement Availability as projected on the line item "Excess ABL Availability After Reserves and Minimum Liquidity" in the most recently delivered thirteen-week cash flow forecast in the Approved Budget; provided, however, the Administrative Agent may charge the Revolving Loan account at any time to pay for the current cash payments of all fees and expenses payable to the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders under the Prepetition Term Loan Documents (including, without limitation, the reasonable fees and disbursements of counsel, financial and other consultants for the Prepetition Term Loan Agent and Prepetition Term Loan Lenders, arising before or after the Petition Date) or any Obligations hereunder.

(f) The making of such Loan shall not violate any requirement of Applicable Law and shall not be enjoined, temporarily, preliminarily or permanently.

(g) No Material Adverse Effect shall have occurred, other than the filing, commencement and continuation of the Chapter 11 Cases, and the events that customarily result from the filing, commencement and continuation of the Chapter 11 Cases (including any litigation resulting therefrom).

#### **ARTICLE IV**

#### **REPRESENTATIONS AND WARRANTIES**

To induce the Agent and the Lenders to enter into this Agreement and to make Loans, each Group Member represents and warrants to the Agent and the Lenders that:

Section 4.1. Existence and Power; Good Standing; Compliance with Law. Each Group Member is duly organized, validly existing and in good standing under the laws of its jurisdiction of organization, and, except as set forth on Schedule 4.1, is duly licensed or qualified to transact business in all jurisdictions where its assets are located, where the character of the property owned or leased or the nature of the business transacted by it makes such licensing or qualification necessary and wherever otherwise necessary to carry out its business and operations. Upon entry of the DIP Order, each Group Member has all requisite power and authority, and the legal right, to conduct its business as currently and proposed to be conducted, to own, operate and pledge its properties and to execute and deliver, and to perform all of its obligations under, each of the Loan Documents and ABL DIP Credit Documents to which it is a party and to consummate the Related Transactions. Each Group Member is in compliance with all applicable Requirements of Law (including Requirements of Law relating to remittances, withholdings, source deductions and wages (including vacation pay and pension contributions)) and has all necessary Permits from or by, has made all necessary filings with, and has given all necessary notices to, each Governmental Authority having jurisdiction over it or its properties, to the extent required for such ownership, operation, pledge or conduct of business. Schedule 4.1 hereto contains, as of the date hereof, (i) a complete and accurate list, for each jurisdiction in which any Group Member operates, of the Permits held by each Group Member with respect to such jurisdiction and (ii) a complete and accurate list of all Permits issued by a Governmental Authority and held by a Group Member with respect to such Group Member's operations in any state or other jurisdiction generally.

Section 4.2. Authorization for Borrowings; No Conflict as to Law or Agreements. Subject to entry of the DIP Order, the execution and delivery by each Obligor of, and performance by such Obligor of its obligations under, each of the Loan Documents and ABL DIP Credit Documents to which it is a party, and the Loans made hereunder, and the consummation of the Related Transactions, are within such Obligor's corporate, limited liability company or similar entity powers, have been duly authorized by all necessary corporate, limited liability or similar entity action in respect of such Obligor and do not and will not (i) require any authorization, consent or approval by, or registration, declaration or filing (other than filing of financing statements and mortgages as contemplated hereunder) with, or notice to, any Governmental Authority, any holders of Equity Interests in such Obligor, or any other Person, except such authorization, consent, approval, registration, declaration, filing or notice as has been obtained, accomplished or given prior to the date hereof, (ii) violate any Requirement of Law with respect to such Obligor or any of its Subsidiaries, (iii) conflict with or contravene such Obligor's Constituent Documents, (iv) conflict with, contravene, constitute a default or breach under, or result in or permit the termination or acceleration of, any indenture or loan or credit agreement or any other material agreement, lease or instrument to which such Obligor or any of its Subsidiaries is a party or by which it or its properties may be bound or affected (including the Loan Documents and the ABL DIP Credit Documents), or (v) result in, or require, the creation or imposition of any Lien upon or with respect to any of the properties now

owned or hereafter acquired by such Obligor or any of its Subsidiaries (other than as required under the Loan Documents in favor of the Collateral Agent and the Secured Parties, and as required under the ABL DIP Credit Documents).

Section 4.3. Legal Agreements. Subject to entry of the DIP Order, each of the Loan Documents and ABL DIP Credit Documents to which any Obligor is a party constitutes the legal, valid and binding obligation and agreement of such Obligor, enforceable against such Obligor in accordance with its terms.

Section 4.4. Group Members; Subsidiaries; Equity Interests. Set forth on Part A of Schedule 4.4 hereto is a complete and correct list of all the Group Members and all Subsidiaries and joint ventures of any of them, reflecting, for each such Person as of the date of this Agreement, its legal name, jurisdiction of organization, the number of shares or units of each class of Equity Interests authorized (if applicable), the number of shares or units of each class of Equity Interests outstanding on the Closing Date and the number and percentage of the outstanding shares or units of each such class of Equity Interests owned (directly or indirectly) by each Borrower and each Guarantor. All outstanding Equity Interests in each such Person have been validly issued, are fully paid and non-assessable (to the extent applicable) and, except in the case of Equity Interests issued by the Administrative Borrower, are owned beneficially and of record by an Obligor free and clear of all Liens other than the security interests created by the Loan Documents and the ABL DIP Credit Documents, any non-consensual Liens arising as a matter of law and permitted under Section 6.1 and, in the case of joint ventures, Permitted Liens. Except as provided in Part B of Schedule 4.4, as of the Closing Date, there are no preemptive or other outstanding subscription or other rights, options, warrants, convertible interests, conversion rights, agreements to issue or sell or vote, phantom rights or powers of attorney other or similar agreements or understandings for the purchase or acquisition from any Group Member, or the voting, of any Equity Interests in any such Person or otherwise relating to the Equity Interests in any Group Member. Except as disclosed in Part C of Schedule 4.4, in the five years preceding the Closing Date, no Obligor and no Subsidiary has acquired any substantial assets from any other Person nor been the surviving entity in a merger or combination.

Section 4.5. Financial Condition; No Adverse Change; No Restricted Payments. The Administrative Borrower has furnished to the Administrative Agent various documents, files, materials, correspondence and other information regarding the business of Borrower and its Subsidiaries, including, without limitation, the audited financial statements for the fiscal year ended April 28, 2012, the unaudited consolidating financial statements for the fiscal year ended April 28, 2012, the unaudited consolidated and consolidating financial statements for each fiscal month and fiscal quarter ended after April 28, 2012 through the Closing Date, and financial projections through April 30, 2016 (the "Projections"). All such documents, files, materials, correspondence and information (other than the Projections) are complete and correct as to the subject matter thereof (taken as a whole) in all respects as of the date made available to the Administrative Agent, do not contain any misstatement of material fact or omit to state a material fact necessary to make the statements contained therein not materially misleading, fairly present in all material respects the financial condition of the Administrative Borrower and its Subsidiaries on the dates thereof and the results of operations for the periods then ended (subject to year-end audit adjustments) and were prepared in accordance with GAAP. The Projections have been prepared in good faith based upon reasonable estimates and assumptions stated therein, which the Administrative Borrower has determined to be reasonable and fair in light of the then current conditions and facts. Since December 29, 2012, other than the filing, commencement and continuation of the Chapter 11 Cases, and the events that customarily result from the filing, commencement and continuation of the Chapter 11 Cases (including any litigation resulting therefrom), there has not occurred any event, development or circumstance or other change in fact, that could, individually or in the aggregate, have or reasonably be expected to have a Material Adverse Effect. Since the Petition Date, no Group Member has directly or indirectly declared, ordered,



paid or made, or set apart any sum or property for, any Restricted Payment or agreed to do so except as set forth on Schedule 4.5 or as permitted by Section 6.4.

Section 4.6. Litigation. Other than the filing, commencement and continuation of the Chapter 11 Cases and any litigation resulting therefrom, there are no actions, investigations, suits, audits, claims, demands, orders, disputes or proceedings pending or, to the knowledge of any Group Member, threatened against or affecting any Group Member or the properties of any of them before any Governmental Authority, that in each case (i) seek injunctive or similar relief or a monetary recovery against any Group Member in excess of \$50,000 or (ii) if adversely determined, could reasonably be expected to have a Material Adverse Effect; in each case, except as set forth and described in Schedule 4.6.

Section 4.7. Margin Regulations. No Group Member has engaged in, or will engage in, the business of extending credit for the purpose of purchasing or carrying margin stock (within the meaning of Regulation U of the Board of Governors of the Federal Reserve System), and no part of the proceeds of any Loan or other extensions of credit hereunder will be used to purchase or carry any margin stock, or to extend credit to others for the purpose of purchasing or carrying any margin stock, in a manner that would result in a violation of Regulation T, U or X of the Board of Governors of the Federal Reserve System.

Section 4.8. Taxes. Each Group Member has paid or caused to be paid to the proper Governmental Authorities all federal or national, state or provincial, and local taxes, domestic or foreign, required to be paid by it. Each Group Member has duly filed with the appropriate Governmental Authority all federal or national, state or provincial, local income, franchise and other tax returns, reports and statements (the "Tax Returns"), domestic or foreign, required to be filed by it, all such Tax Returns are true and correct in all material respects, and all taxes, charges and other impositions reflected therein or otherwise due and payable have been paid prior to the date on which any Liability may be added thereto for non-payment thereof except for those contested in good faith by appropriate proceedings diligently conducted and for which adequate reserves are maintained on the books of the appropriate Group Member in accordance with GAAP all of which are described in Schedule 4.8.

Section 4.9. Titles and Liens; Letters of Credit. Each of the Group Members has good and absolute title to all properties and assets reflected as being owned by such Person in the latest consolidating balance sheets referred to in Section 4.5 (including good record and marketable fee simple title to all Owned Real Property and valid leasehold interests in all Leased Real Property), and each Group Member has good and absolute title to all properties pledged by it, or a Lien on which is granted by it, pursuant to any Loan Document, in each case free and clear of all Liens, except for Permitted Liens. In addition, no financing statement or other Lien notice or recordation naming any Group Member as debtor is on file in any office except to perfect only Permitted Liens and precautionary filings for leases and consignments. The Collateral Agent has a valid, perfected, first-priority (subject only to Permitted Senior Liens) and enforceable security interest in and Lien on the Collateral. As of the date hereof, no Obligor is the account party under any letter of credit other than (x) as listed and described on Schedule 4.9 or (y) as may be issued pursuant to and under the ABL DIP Credit Agreement.

Section 4.10. Employee Benefits Plans. Schedule 4.10 identifies each ERISA Plan as of the Closing Date. No ERISA Event has occurred or could reasonably be expected to occur with respect to an ERISA Plan. Full payment has been made of all amounts that a Controlled Group member is required, under Applicable Law or under the governing documents, to have paid as a contribution to or a benefit under each ERISA Plan. As of the most recent date of release of the financial statements for each Controlled Group member, the liability of such Controlled Group member with respect to each ERISA Plan has been fully funded based upon reasonable and proper actuarial assumptions or has been fully insured. No changes have occurred that would cause a material increase in the cost of providing benefits under any ERISA Plan. With respect to each ERISA Plan that is intended to be qualified under Section

401(a) of the IR Code: (a) such ERISA Plan and any associated trust operationally comply in all respects with the applicable requirements of Section 401(a) of the IR Code; (b) such ERISA Plan and any associated trust have been amended to comply with all such requirements as currently in effect, other than those requirements for which a retroactive amendment can be made within the "remedial amendment period" available under Section 401(b) of the IR Code (as extended under Treasury regulations and other Treasury pronouncements upon which taxpayers may rely); (c) such ERISA Plan and any associated trust have received a favorable determination or opinion letter from the IRS stating that such ERISA Plan qualifies under Section 401(a) of the IR Code, that the associated trust qualifies under Section 501(a) of the IR Code and, if applicable, that any cash or deferred arrangement under the ERISA Plan qualifies under Section 401(k) of the IR Code, unless such ERISA Plan was first adopted at a time for which the above-described "remedial amendment period" has not yet expired; (d) such ERISA Plan currently satisfies the requirements of Section 410(b) of the IR Code, without regard to any retroactive amendment that may be made within the above-described "remedial amendment period"; and (e) no contribution made to such ERISA Plan is subject to an excise tax under Section 4972 of the IR Code. With respect to any Pension Plan, there are no unfunded benefit liabilities as defined in Section 4001(a)(18) of ERISA and the "accumulated benefit obligation" with respect to such Pension Plan (as determined in accordance with Statement of Accounting Standards No. 87, "Employers' Accounting for Pensions") does not exceed the fair market value of Pension Plan assets.

Section 4.11. Default; Affiliate Transactions; Material Contracts. Each Group Member is in compliance with all provisions of all material agreements, instruments, decrees and orders (including the Loan Documents and the ABL DIP Credit Documents) to which it is a party or by which it or its property is bound or affected. Each representation, warranty and certification made by each Group Member under the ABL DIP Credit Documents was true and correct when made or deemed made. Except as set forth on Part A of Schedule 4.11, no Obligor has (i) any written agreements or binding arrangements of any kind with any Affiliate of any Obligor (except for another Obligor) or (ii) any management or consulting agreements of any kind. Part B of Schedule 4.11 contains a true, correct and complete list of all the Material Contracts (other than the Loan Documents and the ABL DIP Credit Documents) in effect as of the date hereof, and except as set forth on Part C of Schedule 4.11, all Material Contracts (including the Loan Documents and the ABL DIP Credit Documents) are in full force and effect and no defaults exist thereunder.

Section 4.12. Environmental Compliance. Each Group Member has obtained all Permits that are required under Environmental Laws at the facilities of such Group Member or any of its Subsidiaries or in connection with the operation of such facilities.

Except as disclosed in Schedule 4.12, each Group Member complies, and all activities of each Group Member at its respective facilities comply, and has or have complied for the past five years, with all Environmental Laws and with all terms and conditions of any required Permits applicable to such Group Member with respect thereto.

Except as disclosed in Schedule 4.12, each Group Member is in compliance with all limitations, restrictions, conditions, standards, prohibitions, requirements, obligations, schedules and timetables contained in Environmental Laws or contained in any plan, order, decree, judgment or notice of which such Group Member is aware.

Except as disclosed in Schedule 4.12:

(i) no Group Member is aware of, nor has any Group Member received notice of, any events, conditions, circumstances, activities, practices, incidents, actions or plans which may interfere with or prevent continued compliance with, or which may give rise to any Liability

under, any Environmental Laws, and each Group Member has maintained an environmental management system for its and each of its Subsidiaries' operations that demonstrates a commitment to environmental compliance and includes procedures for (a) preparing and updating written compliance manuals covering pertinent regulatory areas, (b) tracking changes in applicable Environmental Laws and modifying operations to comply with new requirements thereunder, (c) training employees to comply with applicable environmental requirements and updating such training as necessary, (d) performing regular internal compliance audits of each of its facility and ensuring correction of any incidents of non-compliance detected by means of such audits, and (e) reviewing the compliance status of off-site waste disposal facilities,

(ii) no Group Member is party to, and no Group Member is subject to or, with respect to any Real Property currently (or to the knowledge of any Group Member previously) owned, leased, subleased, operated or otherwise occupied by or for any Group Member, the subject of, any pending or threatened order, action, suit, proceeding, claim, written demand, dispute or notice of violation or of potential Liability or similar notice under or pursuant to any Environmental Law,

(iii) no Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities has attached to any property of any Group Member and, to the knowledge of each Group Member, no facts, circumstances or conditions exist that could reasonably be expected to result in any such Lien attaching to any such property,

(iv) no Group Member has caused or permitted to occur a Release of Hazardous Substances at, to or from any Real Property currently (or to the knowledge of any Group Member previously) owned, leased, subleased, operated or otherwise occupied by or for any Group Member and each such Real Property is free of contamination by any Hazardous Substances except for such Release or contamination that could not reasonably be expected to result in Environmental Liabilities of any Group Member,

(v) to the best of its knowledge, no Group Member nor any of its Subsidiaries has any unregistered underground storage tanks on or under any Real Property currently (or to the knowledge of any Group Member previously) owned, leased, subleased, operated or otherwise occupied by or for any Group Member that are subject to any Environmental Laws, including underground storage tank laws or regulations,

(vi) no Group Member nor any of its Subsidiaries owns a storage tank facility,

(vii) no Group Member (x) is or has been engaged in, or has permitted any current or former tenant to engage in, operations, or (y) knows of any facts, circumstances or conditions, including receipt of any information request or notice of potential responsibility under CERCLA or similar Environmental Laws, that, in all cases in clause (x) or (y) above in the aggregate, could have a reasonable likelihood of resulting in material Environmental Liabilities, and

(viii) compliance with all requirements pursuant to or under Environmental Laws in effect on the date hereof.

Section 4.13. [Reserved].

Section 4.14. Real Estate.

(a) As of the date hereof, Part A of Schedule 4.14(a) hereto contains a true, accurate and complete list of all Owned Real Property and all Leased Real Property, which schedule sets forth for each such Real Property the facility designation, the current street address (including, the county (or other relevant jurisdiction) and state), whether such Real Property is Owned Real Property or Leased Real Property, the record owner thereof (in the case of Owned Real Property) and, if applicable, the name of each landlord and tenant thereof. As of the date hereof, Part B of Schedule 4.14(a) hereto contains a true, accurate and complete list of all Leases (together with all amendments, modifications, supplements, renewals or extensions of any thereof) affecting Owned Real Property or Leased Real Property in respect of which an Obligor is the landlord or sublessor.

(b) (i) Except as specified on Part A of Schedule 4.14(b) hereto, each Lease affecting Owned Real Property or Leased Real Property in respect of which an Obligor is the tenant or subtenant is in full force and effect and no Obligor has knowledge of any default that has occurred and is continuing thereunder, and each such Lease constitutes the legally valid and binding obligation of the applicable Obligor, enforceable against such Obligor in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

(ii) Except as specified on Part B of Schedule 4.14(b) hereto, each Lease affecting Owned Real Property or Leased Real Property in respect of which an Obligor is the landlord or sublessor is in full force and effect and no Obligor has knowledge of any default that has occurred and is continuing thereunder, and each such Lease constitutes the legally valid and binding obligation of the applicable Obligor, enforceable against such Obligor in accordance with its terms, except as enforcement may be limited by bankruptcy, insolvency, reorganization, moratorium or similar laws relating to or limiting creditors' rights generally or by equitable principles.

(c) As of the date hereof, Schedule 4.14(c) hereto contains a true, accurate and complete list of each location at which Inventory or equipment is located, specifying the character thereof in each case.

Section 4.15. Deposit Accounts and Securities Accounts. Schedule 4.15 hereto is a complete and correct list of all of the Obligors' deposit accounts and securities accounts as of the date of this Agreement, including, for each deposit account and securities account, (i) the name and contact details for the institution at which such account is maintained, (ii) the account name and number, and account type, and (iii) the purpose and use of such account.

Section 4.16. Labor Relations. No Group Member is aware that it is, or has within the last five years, engaged in any unfair labor practice. Except as set forth on Schedule 4.16A hereto, there is no unfair labor practice complaint or complaint of employment discrimination, or grievance or arbitration arising out of or under any collective bargaining agreement, pending against any Group Member, or, to the knowledge of the Group Members, threatened against any Group Member, before any Governmental Authority. There are no strikes, labor disputes, work stoppages, slowdowns or lockouts existing, pending (or, to the knowledge of any Group Member, threatened) against or involving any Group Member. As of the Closing Date, (a) there is no collective bargaining or similar agreement with any union, labor organization, works council or similar representative covering any employee of any Group Member, (b) except as set forth on Schedule 4.16B hereto, no petition for certification or election of any such representative is existing or pending with respect to any employee of any Group Member, and (c) no such representative has sought certification or recognition with respect to any employee of any Group Member.

The Administrative Borrower covenants and agrees that it shall advise the Administrative Agent in writing of its becoming aware of the occurrence of any of the foregoing events or circumstances arising subsequent to the Closing Date, promptly, and in any event within five Business Days of obtaining knowledge thereof.

Section 4.17. Relevant Jurisdictions. Schedule 4.17 identifies in respect of each Group Member as of the date hereof, its jurisdiction of formation or organization, the full address (including postal code or zip code) of its chief executive office and all places of business and, if different, the address at which the books and records of such Group Member are located, the address at which senior management of such Group Member are located and conduct their deliberations and make their decisions with respect to the business of such Group Member, all jurisdictions in which such Group Member has property, and the address from which the invoices and accounts of such Group Member are issued.

Section 4.18. Intellectual Property. Each Group Member owns or licenses all Intellectual Property that is necessary for the conduct of its businesses as currently conducted. All items of Intellectual Property that have been either registered, or in respect of which a registration application has been filed, by any Group Member, as at the Closing Date, are listed on Schedule 4.18. Except as disclosed on Schedule 4.18, to the knowledge of each Group Member, (a) the conduct and operations of the businesses of each Group Member do not, and have not been alleged in writing by any other Person to, infringe, misappropriate, dilute, violate or otherwise impair any Intellectual Property rights of any other Person and (b) no other Person has contested any right, title or interest of any Group Member in, or relating to, any Intellectual Property. In addition, except as disclosed on Schedule 4.18, (x) there are no pending (or, to the knowledge of any Group Member, threatened) actions, investigations, suits, proceedings, audits, claims, demands, orders or disputes affecting any Group Member with respect to, (y) no judgment or order regarding any such claim has been rendered by any competent Governmental Authority, and no settlement agreement or similar contractual obligation has been entered into by any Group Member, with respect to, and (z) no Group Member knows of any valid basis for any claim based on, any such infringement, misappropriation, dilution, violation or impairment or contest. None of the items of Intellectual Property of the Group Members that is registered (or for which an application for registration is pending) in any jurisdiction other than the United States and Canada is, singly or as a whole, of more than *de minimis* value or necessary for the conduct of any Group Member's business.

Section 4.19. Ownership. Schedule 4.19 identifies completely and accurately as at the Closing Date, to the best of the knowledge of the Responsible Officers of the Administrative Borrower, each Person that (a) Controls the Administrative Borrower or any Affiliate of the Administrative Borrower or (b) owns or controls more than 5.0% of the outstanding Equity Interests of the Administrative Borrower (each Person referred to in clause (a) or (b) above, a "Control Person").

Section 4.20. Restrictions on Subsidiaries. No Subsidiary of any Group Member is subject to any instrument, contractual obligation or agreement imposing restrictions or limitations of a type prohibited by Section 6.6(c) or Section 6.9.

Section 4.21. Insurance. The Group Members maintain insurance in accordance with the requirements of Section 5.6, including, as of the Closing Date, pursuant to the insurance policies described on Schedule 4.21, which Schedule sets forth in reasonable detail the name of the relevant insurance company, the type of policy, the coverage thereof and deductibles provided for therein, and the policy number. The insurance policies of the Group Members, pursuant to which such insurance is maintained, are valid and current, and subject to endorsements for the benefit of the Collateral Agent as required by Section 5.6.

Section 4.22. Schedules. All of the information that is required to be scheduled to this Agreement is set forth on the Schedules attached hereto, is correct and accurate and does not omit to state any information material thereto.

Section 4.23. Anti-Terrorism Laws.

(a) No Group Member or Reporting Affiliate of a Group Member (in the case of Carson-Dellosa Publishing, LLC, to the best knowledge of the Administrative Borrower after due inquiry) is in violation of any Anti-Terrorism Law or engages in or conspires to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate, any of the prohibitions set forth in any Anti-Terrorism Law. No Group Member or Reporting Affiliate of a Group Member (in the case of Carson-Dellosa Publishing, LLC, to the best knowledge of the Administrative Borrower after due inquiry) (A) conducts any business or engages in making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person or (B) deals in, or otherwise engages in any transaction relating to, any property or interests in property blocked pursuant to Executive Order No. 13224.

(b) No Group Member or Reporting Affiliate of a Group Member (in the case of Carson-Dellosa Publishing, LLC for purposes of clauses (C), (D), and (F) below, to the best knowledge of the Administrative Borrower after due inquiry), or to any Group Member's knowledge, any of their respective agents acting or benefiting in any capacity in connection with the making of the Loans or the other transactions hereunder, is any of the following (each a "Blocked Person"): (A) a Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (B) a Person owned or controlled by, or acting for or on behalf of, any Person that is listed in the annex to, or is otherwise subject to the provisions of, Executive Order No. 13224; (C) a Person with which any Agent or any Lender is prohibited from dealing or otherwise engaging in any transaction by any Anti-Terrorism Law; (D) a Person that commits, threatens or conspires to commit or supports "terrorism" as defined in Executive Order No. 13224; (E) a Person that is named as a "specially designated national" on the most current list published by the U.S. Treasury Department Office of Foreign Asset Control at its official website or any replacement website or other replacement official publication of such list; or (F) a Person who is affiliated with a Person listed above.

Section 4.24. [Reserved].

Section 4.25. Surety Obligations. No Group Member is obligated as surety or indemnitor under any bond or other contract that assures payment or performance of any obligation of any Person, except as expressly permitted hereunder.

Section 4.26. Brokers. Except as disclosed on Schedule 4.26, there are no brokerage commissions, finder's fees or investment banking fees payable by any Group Member in connection with any transactions contemplated by the Loan Documents or the ABL DIP Credit Documents or the Related Transactions and each Obligor hereby jointly and severally indemnifies the Secured Parties against, and agrees that it will hold the Secured Parties harmless from, any claim, demand or liability for any such broker's or finder's fees alleged to have been incurred in connection herewith or therewith and any expenses (including reasonable fees, expenses and disbursements of counsel) arising in connection with any such claim, demand or liability.

Section 4.27. Burdensome Contracts. No Group Member is party or subject to any Restrictive Agreement, except (i) the Loan Documents and the ABL DIP Credit Documents, (ii) Restrictive Agreements with respect to specific property unencumbered to secure payment of particular Debt

permitted hereby or to be sold pursuant to an executed agreement with respect to an asset Disposition permitted hereby, (iii) Restrictive Agreements evidencing restrictions by reason of customary provisions restricting assignments, subletting or other transfers contained in a Lease, or any other lease, license or similar agreement entered into in the ordinary course of business; provided that such restrictions are limited to the property secured by such Liens or the property subject to such Lease, lease, license or similar agreement, as the case may be, and (iv) as shown on Schedule 4.27. No such Restrictive Agreement prohibits the execution, delivery or performance of any Loan Document or Revolving Credit Document by a Group Member.

Section 4.28. Not a Regulated Entity. No Group Member is (a) an "investment company" or a "person directly or indirectly controlled by or acting on behalf of an investment company" within the meaning of the Investment Company Act of 1940; or (b) subject to regulation under any public utilities code or any other Applicable Law regarding its authority to incur Debt or grant Liens on its property.

Section 4.29. Payables Practices. Except to the extent subject to the automatic stay of Section 362 of the Bankruptcy Code, each Group Member has paid or discharged, or caused to be paid or discharged, when due (or, if earlier, prior to the date on which penalties attach thereto), (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it, (b) all federal, state, local and foreign taxes required to be withheld by it, and (c) all lawful claims for labor, materials and supplies which, if unpaid, might by law become a Lien or charge upon any of its properties; except, in each case, to the extent the amount, applicability or validity of any such tax, assessment, charge or claim was and is contested in good faith by appropriate proceedings diligently conducted and for which such Group Member, as applicable, set aside adequate reserves in accordance with GAAP.

Section 4.30. Criminal Charges. Other than as disclosed on Schedule 4.30, no Group Member, or any officer, director, member, executive board member or similar function-holder of any Group Member, is or has been under investigation by a Governmental Authority for, or has been indicted, arrested, or convicted of, or has settled (with or without an admission of guilt) any charges relating to, any criminal offense (whether a felony, misdemeanor, or other crime).

Section 4.31. Commodity Hedging. Giving effect to the Loans and ABL DIP Credit Loans to be made on the Closing Date and the use of the proceeds thereof, no Obligor has any Commodity Hedging Obligations.

Section 4.32. Complete Disclosure. The Loan Documents do not, when taken as a whole, contain any untrue statement of a material fact, or fail to disclose any material fact necessary to make the statements contained therein not materially misleading. To the best of each Obligor's knowledge, there is no fact or circumstance that any Obligor has failed to disclose to the Administrative Agent in writing that could reasonably be expected to have a Material Adverse Effect.

Section 4.33. Survival of Representations and Warranties. All representations and warranties made under this Agreement and the other Loan Documents shall survive, and not be waived by, the execution and delivery hereof by the Secured Parties, or any of them, any investigation or inquiry by any Secured Party, or the making of any Loan under this Agreement.

Section 4.34. Reorganization Matters.

(a) The Chapter 11 Cases were commenced on the Petition Date in accordance with applicable law and proper notice thereof and the proper notice for (x) the motion seeking approval of the Loan Documents and the Interim Order and Final Order, (y) the hearing for the

approval of the Interim Order, and (z) the hearing for the approval of the Final Order will be given. The Borrowers shall give on a timely basis as specified in the Interim Order or the Final Order, as applicable, all notices required to be given to all parties specified in the Interim Order or Final Order, as applicable.

(b) 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 superpriority administrative expense claims in the Chapter 11 Cases having priority over all administrative expense claims and unsecured claims against the Borrowers now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expense claims of the kind specified in sections 326, 330, 331, 503(b), 506(c), 507(a), 507(b), 726, or any other provision of the Bankruptcy Code or otherwise, as provided under section 364(c)(1) of the Bankruptcy Code, subject, as to priority only, to the Carve-Out and, solely to the extent required by the Intercreditor Agreement, the ABL DIP Credit Obligations.

(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 first priority Lien on all of the Collateral, subject, as to priority only, to the Carve-Out and the ABL DIP Credit Priority Collateral.

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

## **ARTICLE V**

### **AFFIRMATIVE COVENANTS**

From the date of this Agreement and thereafter until the Commitments are terminated or expire and the Loans and all other Obligations have been paid in full, unless the Required Lenders shall otherwise expressly consent in writing:

Section 5.1. Reporting Requirements. The Administrative Borrower (or any applicable Group Member) will deliver, or cause to be delivered, to the Administrative Agent, and the Administrative Agent will deliver, or caused to be delivered, to each Lender each of the following, which shall be in form and detail reasonably acceptable to the Required Lenders:

(a) as soon as available, and in any event within 90 days after the end of each fiscal year of the Administrative Borrower, annual financial statements of the Administrative Borrower and its Subsidiaries, prepared on a consolidated and consolidating basis, with the unqualified opinion of independent certified public accountants of recognized national standing selected by the Administrative Borrower and reasonably acceptable to the Administrative Agent (without a "going concern" or like qualification, assumption or exception and without any qualification or exception as to the scope of such audit; provided that the financial statements required by this Section 5.1(a) in respect of the fiscal year ending April 27, 2013 may contain a "going concern" or like qualification or exception relating solely to the commencement of the Chapter 11 Cases, and not resulting from a limitation of scope or the failure of such financial statements to present fairly, in all material respects, the financial position, results of operations, or cash flow of the Administrative Borrower and its subsidiaries in accordance with GAAP) to the effect that such financial statements present fairly in all material respects the financial condition, cash flow and results of operations of the Administrative Borrower and its Subsidiaries on a consolidated basis



in accordance with GAAP consistently applied, accompanied by any management letter, audit report or similar letter or report prepared by said accountants in connection with such financial statements or any audit thereof; which annual financial statements shall include the balance sheets of the Administrative Borrower and its Subsidiaries as at the end of such fiscal year and the related statements of income, retained earnings, cash flows and shareholder's equity of the Administrative Borrower and its Subsidiaries for the fiscal year then ended, all in reasonable detail in form acceptable to Agent and prepared in accordance with GAAP;

(b) (i) as soon as available, and in any event within 30 days after the end of each fiscal month of the Administrative Borrower, internally prepared financial statements of the Administrative Borrower and its Subsidiaries and Business Segment Financial Statements and other operational and financial reporting required by the Administrative Agent, in each case in form and substance acceptable to the Administrative Agent, prepared on a consolidated and consolidating basis, as at the end of and for such month and for the year-to-date period then ended, in reasonable detail in form acceptable to the Administrative Agent, and the figures for the corresponding date and periods in the previous year on a monthly and year-to-date basis and for the corresponding date and periods in the then-applicable operating plan and projections delivered pursuant to Section 5.1(c), all prepared in accordance with GAAP, subject to year-end audit adjustments and the addition of footnotes, in each case accompanied by an analysis of material factors affecting the period and an MD&A of such financial statements for (w) the Administrative Borrower and its Subsidiaries on a consolidated basis, (x) the Accelerated Learning Business, (y) the Educational Resources Business, and (z) the Delta Business; (ii) as soon as available, and in any event within 45 days after the end of each fiscal quarter of the Administrative Borrower, internally prepared financial statements of the Administrative Borrower and its Subsidiaries and Business Segment Financial Statements in form and substance acceptable to the Administrative Agent, prepared on a consolidated and consolidating basis, as at the end of and for such quarter and for the year-to-date period then ended, in reasonable detail in form acceptable to the Administrative Agent, and the figures for the corresponding date and periods in the previous year on a quarterly and year-to-date basis and for the corresponding date and periods in the then-applicable operating plan and projections delivered pursuant to Section 5.1(c), all prepared in accordance with GAAP, subject to year-end audit adjustments and the addition of footnotes, in each case accompanied by an analysis of material factors affecting the period and an MD&A of such financial statements for (w) the Administrative Borrower and its Subsidiaries on a consolidated basis, (x) the Accelerated Learning Business, (y) the Educational Resources Business, and (z) the Delta Business and (iii) as soon as available, and in any event within 30 days after the end of each fiscal month of the Administrative Borrower, an updated six-month consolidated balance sheet, income statement and statement of cash flow of the Administrative Borrower and its Subsidiaries and income statements by Business Segment for the succeeding six-month period in form and substance satisfactory to the Administrative Agent, in its sole discretion.

(c) as soon as available, and in any event no later than May 30 of each fiscal year of the Administrative Borrower, a consolidated operating plan and projections for each of the Business Segments for the subsequent fiscal year, prepared on a monthly basis, which have been approved by the Administrative Borrower's board of directors (or equivalent body), in the same form as submitted to such board of directors or equivalent body and accompanied by such supporting calculations as may be requested by the Agent, and which present a good faith opinion as of the date made as to such projections, valuations and pro forma conditions and results, and as soon as available, and in any event no later than July 31 of each fiscal year, a copy of the annual auditor's report to the board of directors (or equivalent body); and as soon as available and in any event no later than October 31st of each fiscal year (but not prior to October 15th of such fiscal year) a reforecast of the previously delivered operating plan and projections for the businesses of the

Administrative Borrower and its Subsidiaries as at June 30th of such year, which presents a good faith opinion as of the date made as to such projections, valuations and pro forma conditions;

(d) together with delivery of the financial statements described in Sections 5.1(a) and (b), a Compliance Certificate of the Chief Financial Officer of the Administrative Borrower stating (i) that such financial statements have been prepared in accordance with GAAP, and present fairly in all material respects the financial conditions, cash flow and results of operations of the Administrative Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP consistently applied, subject, in the case of financial statements described in Section 5.1(b), to normal year-end audit adjustments and the addition of footnotes, (ii) whether or not such officer has knowledge of the occurrence of any Default or Event of Default hereunder not theretofore reported and, if so, stating in reasonable detail the facts with respect thereto, and (iii) all relevant facts in reasonable detail to evidence, and the computations as to, whether the Administrative Borrower and its Subsidiaries are in compliance with the requirements set forth in Sections 6.1, 6.2, 6.3, 6.4, 6.5, 6.12 and 6.16;

(e) together with each Compliance Certificate delivered pursuant to Section 5.1(d) above, a certificate, each in form and substance satisfactory to the Administrative Agent, by a Responsible Officer that (i) the information provided on Schedules 4.4, 4.6, 4.11, 4.12, 4.14, 4.15, 4.18, 4.19, 4.21 and 4.30 (or on updated schedules attached to such certificate, or the most recent updated schedules delivered pursuant to this clause (e)) is correct and complete in all material respects as of the date of such Compliance Certificate, (ii) the Obligors have delivered all documents (including updated schedules as to locations of Collateral and acquisition of Intellectual Property or Real Property) they are required to deliver pursuant to any Loan Document on or prior to the date of delivery of such Compliance Certificate, (iii) complete and correct copies of all documents modifying any term of any (A) Constituent Document of any Group Member or any Subsidiary or joint venture thereof on or prior to the date of delivery of such Compliance Certificate, and (B) Revolving Credit Document or other Material Contract, in each case, have been delivered to the Administrative Agent or are attached to such certificate;

(f) together with each Compliance Certificate delivered pursuant to clause (d) above, a discussion and analysis of the financial condition and results of operations of the Group Members for the portion of the fiscal year then elapsed and discussing the reasons for any significant variations from (i) the projections for such period delivered pursuant to clause (c) above, and (ii) the figures for the corresponding period in the previous fiscal year;

(g) together with each delivery of annual financial statements pursuant to clause (a) above, each in form reasonably satisfactory to the Administrative Agent and certified as complete and correct by a Responsible Officer as part of the Compliance Certificate delivered in connection with such financial statements, a summary of all material insurance coverage maintained as of the date thereof by any Group Member, together with such other information as the Administrative Agent may reasonably require;

(h) together with each delivery of annual financial statements pursuant to Section 5.1(a) above and each delivery of monthly and quarterly financial statements pursuant to Section 5.1(b) above, (i) a listing of government contracts of any Obligor subject to the Federal Assignment of Claims Act of 1940; and (ii) a list of any applications for the registration of any Intellectual Property filed by any Obligor with the United States Patent and Trademark Office, the United States Copyright Office or any similar office or agency in the prior fiscal year or month, as applicable;

(i) as soon as possible, but in any event no later than three Business Days, after an officer of any Group Member obtains knowledge thereof, a notice of any written information, exhibit, or report furnished to the Administrative Agent or the Lenders having 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 (provided, that any such notification pursuant to this clause (i) 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);

(j) as soon as possible, but in any event no later than three Business Days, after the commencement of, or any material developments in, any action, investigation, suit, proceeding, audit, claim, demand, order or dispute with, by or before any Governmental Authority affecting any Group Member, or any officer, director, member, executive board member or similar function-holder of any of them, or any property of any Group Member, of the type described in Section 4.6 or which (i) seeks injunctive or similar relief or a monetary recovery against any Group Member in excess of \$200,000 or (ii) if adversely determined, could reasonably be expected to have a Material Adverse Effect, notice of such commencement or development, together with a statement by a Responsible Officer setting forth reasonable detail thereof;

(k) as soon as possible, but in any event no later than two Business Days, after an officer of any Group Member obtains knowledge of the occurrence of a Default or Event of Default or default or event of default hereunder or under any Material Contract, or of the termination of any Material Contract, notice of such occurrence or termination, together with a detailed statement by a Responsible Officer setting forth the steps being taken by the Administrative Borrower or its Subsidiaries to cure the effect of any such Default or Event of Default or default or event of default;

(l) as soon as possible, but in any event no later than three Business Days, after an officer of any Group Member obtains knowledge of the occurrence of any event, or the existence of any circumstance, that would reasonably be expected to have a Material Adverse Effect, notice of such occurrence or existence, together with a detailed statement by a Responsible Officer setting forth the nature and anticipated effect thereof and any action proposed to be taken in connection therewith;

(m) as soon as possible, but in any event no later than five Business Days, after an officer of any Group Member obtains knowledge of the occurrence of any event reasonably expected to result in a mandatory payment of the Obligations pursuant to Section 2.9, notice of such occurrence, together with a detailed statement by a Responsible Officer setting forth, in the case of a transaction, the material terms and conditions of such transaction, and in any case estimating the Net Cash Proceeds thereof, if any;

(n) as soon as possible, but in any event no later than five Business Days, after (i) any Group Member knows or has reason to know that any Reportable Event with respect to any ERISA Plan has occurred, the statement of a Responsible Officer setting forth details as to such Reportable Event and the action which the Administrative Borrower or its Subsidiaries propose to take with respect thereto, together with a copy of the notice of such Reportable Event to the PBGC, (ii) any Group Member fails to make any quarterly contribution required with respect to any ERISA Plan under the IR Code, as amended, the statement of a Responsible Officer setting forth details as to such failure and the action which the Administrative Borrower or its Subsidiaries propose to take with respect thereto, together with a copy of any notice of such failure required to be provided to

the PBGC, (iii) the commencement of any material labor dispute to which any Group Member is or may become a party, including any strikes, lockouts or other disputes relating to any of such Person's plants and other facilities, or the incurrence by any Group Member of any Worker Adjustment and Retraining Notification Act or related or similar liability incurred with respect to the closing of any plant or other facility of any such Person, the statement of a Responsible Officer setting forth details as to such dispute or liability and the action which the Administrative Borrower or its Subsidiaries propose to take with respect thereto;

(o) as soon as possible, but in any event no later than five Business Days, after (i) any Group Member knows or has reason to know thereof, notice of (A) unpermitted Releases, (B) the receipt by any Group Member of any notice of violation of or potential Liability or similar notice under, or the existence of any condition that could reasonably be expected to result in violations of or Liabilities under, any Environmental Law or (C) the commencement of, or any material change to, any action, investigation, suit, proceeding, audit, claim, written demand, dispute alleging a violation of or Liability under any Environmental Law, that, for each of clauses (A), (B) and (C) above (and, in the case of clause (C), if adversely determined), in the aggregate for each such clause, could reasonably be expected to result in aggregate Environmental Liabilities, collectively for all such Environmental Liabilities, in excess of \$200,000, or resulting, in the aggregate, in Environmental Cash Expenses in excess of \$200,000 in any fiscal year of the Administrative Borrower, in each case net of Environmental Reimbursements in respect of such Environmental Liabilities, (ii) the receipt by any Group Member of notification that any property of any Group Member is subject to any Lien in favor of any Governmental Authority securing, in whole or in part, Environmental Liabilities, notice thereof together with a copy of such notification, and (iii) any Group Member knows or has reason to know that any proposed acquisition or lease, license or other occupancy of Real Property has a reasonable likelihood of resulting in Environmental Liabilities, notice thereof together with the statement of a Responsible Officer setting forth details as to such transaction and such Environmental Liabilities;

(p) as soon as possible, but in any event no later than three Business Days, after any Group Member knowing or having reason to know thereof, notice of the violation by any Group Member of any Applicable Law that could have a Material Adverse Effect;

(q) as soon as possible, but in any event no later than two Business Days, after any Group Member knowing or having reason to know thereof, notice of (a) the creation, or filing with the Internal Revenue Service or any other Governmental Authority, of any contractual obligation or other document extending, or having the effect of extending, the period for assessment or collection of any taxes with respect to any Group Member and (b) the creation of any contractual obligation of any Group Member, or the receipt of any request directed to any Group Member, to make any adjustment under Section 481(a) of the IR Code, by reason of a change in accounting method or otherwise;

(r) as soon as possible, but in any event no later than one Business Day, after their distribution, copies of all (i) press releases concerning material developments in the business of the Group Members, (ii) financial statements, reports, proxy statements and other communications which the Administrative Borrower, any other Group Member, shall have sent to (x) its shareholders or any other stakeholders (including, without limitation, holders of Debt) or (y) the Securities and Exchange Commission, the National Association of Securities Dealers, Inc., any securities exchange or any Governmental Authority exercising similar functions;

(s) as soon as possible, but in any event no later than three Business Days, after execution, receipt or delivery thereof, copies of any notices, demands, statements, certificates, reports,

valuations, appraisals, Borrowing Base Certificates or other communications or documents that any Obligor executes, receives or delivers in connection with any ABL DIP Credit Documents or other Material Contracts; provided, that each Borrowing Base Certificate delivered by the Borrowers shall have at least the level of detail as, and shall reflect a calculation of the borrowing base using a methodology consistent with, the Borrowing Base Certificate delivered as of the Closing Date;

(t) as soon as possible, but in no event later than one Business Day, after any Group Member knowing or having reason to know thereof, notice of any reduction in the value of any Inventory, equipment, Real Property or other Collateral due to loss, damage, sale, transfer or other Disposition or conveyance (including, without limitation, by eminent domain or similar process) that could have a Material Adverse Effect;

(u) as soon as possible, but in any event no later than five Business Days, after management of any Group Member obtains knowledge thereof, the identity of each Person that obtains ownership or control of more than 5.0% of the outstanding Equity Interests of the Administrative Borrower;

(v) promptly, upon request of the Administrative Agent, a written statement duly acknowledged by the Borrowers setting forth the outstanding principal balance of the Term Loans and stating whether any offsets or defenses exist against the Obligations (whether or not any Borrower is entitled to utilize or rely on such offsets or defenses pursuant to the terms of this Agreement and the other Loan Documents);

(w) copies of all public filings made by any Group Member;

(x) such other information respecting the financial or other condition, and results of operations, of any Group Member, or the Collateral, as the Administrative Agent or the Required Lenders may from time to time reasonably request, including without limitation backup calculations for each Borrowing Base Certificate in at least the level of detail provided by the Borrowers to the ABL DIP Agent;

(y) (i) two Business Days prior to the Closing Date, the initial Approved Budget; (ii) no later than five Business Days prior to the beginning of each fiscal month (with the first such delivery date being February 25, 2013), an updated thirteen-week cash flow forecast for the succeeding thirteen-week period in form and substance satisfactory to the Administrative Agent, in its sole discretion, which, upon acceptance by the Administrative Agent, shall become the thirteen-week cash flow forecast in the Approved Budget, and (iii) on or before 12:00 p.m. New York, New York time on the third Business Day following the end of each fiscal week (with the first such delivery date being February 6, 2013), a Variance Report, in form and substance satisfactory to the Administrative Agent, in its sole discretion, together with a certificate substantially in the form of Exhibit B jointly from the chief financial officer and chief restructuring officer as to the compliance with the requirements under Section 6.31.

(z) copies of all monthly reports, projections, or other information respecting Administrative Borrower's or any of its Subsidiaries' business or financial condition or prospects as well as all pleadings, motions, applications and judicial information filed by or on behalf of the Borrowers with the Bankruptcy Court or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case) or the Committee, at the time such document is filed with the Bankruptcy Court, or provided by or to the U.S. Trustee (or any monitor or interim receiver, if any, appointed in any Chapter 11 Case) or the Committee.

(aa) monthly at reasonable times upon the request of the Agent, confirmation of availability for, and arrange for, the chief executive officer, chief financial officer and chief restructuring officer and other members of management of the Borrowers to participate in a call with the Agent and the Lenders to discuss matters relating to the Borrowers.

(bb) (i) As soon as possible, but in any event no later than five Business Days after the Closing Date, a list describing (x) any actual or threatened termination, cancellation or limitation of, or modification to or change in, the business relationship, or any supply, sales or other agreement between (i) any Group Member, on the one hand, and any customer or any group thereof, on the other hand, whose agreements with any Group Member are individually or in the aggregate material to the business or operations of such Group Member, or (ii) any Group Member, on the one hand, and any supplier or any group thereof, on the other hand, whose agreements with any Group Member are individually or in the aggregate material to the business or operations of such Group Member and (y) the amount of revenues or purchases of the Group Members from such customer and/or supplier in the prior fiscal year, and (ii) as soon as possible, but in any event no later than one Business Day after any Group Member's knowledge of any such actual or threatened termination, cancellation, limitation, modification or change, a notice to the Administrative Agent describing the same and the amount of revenues or purchases of the Group Members from such customer and/or supplier in the prior fiscal year.

Section 5.2. Books and Records; Inspection and Examination; Appraisals.

(a) Each Obligor will, and will cause each of its Subsidiaries to, (i) keep accurate books of record and account for itself pertaining to its business, financial condition, financial transactions, assets and liabilities, and such other matters as the Administrative Agent may from time to time request, in which true and complete entries in all material respects will be made in accordance with GAAP consistently applied; (ii) upon the request of and reasonable notice by the Administrative Agent to the Administrative Borrower (which notice shall not be required during the continuance of an Event of Default), permit any officer, employee, attorney, agent, consultant, advisor or accountant of the Administrative Agent to audit, review, make extracts from or copy any and all of any Obligor's corporate (and similar), financial, operating and other books and records at all reasonable times during ordinary business hours (at the Borrowers' expense) and to discuss its affairs with any of its directors, officers, employees, attorneys, consultants, advisors or agents (collectively, a "Field Review"); provided that, so long as no Event of Default has occurred and be continuing, the Administrative Agent shall be limited to two such Field Reviews during any twelve consecutive month period; and (iii) permit the Administrative Agent or its employees, accountants, attorneys, consultants, advisors or agents, to examine and inspect any of its property at any time during ordinary business hours upon reasonable advance notice (which notice shall not be required during the continuance of an Event of Default), and to communicate directly with any registered certified public accountants (including the Group Members' accountants). Upon prior notice to the Administrative Borrower, each Group Member shall authorize its respective registered certified public accountants to communicate directly with the Administrative Agent and to disclose to the Administrative Agent all financial statements and other documents and information as they might have and the Administrative Agent requests with respect to any Group Member.

(b) Without limitation of the provisions of Section 5.2(a), each Obligor will cooperate with the Administrative Agent in order to enable the Administrative Agent (or one or more third-parties engaged by the Administrative Agent) to complete collateral appraisals, examinations and audits of the Obligors' Inventory, Accounts, financial books and records and fixed assets as deemed necessary at any time and from time to time in the Administrative Agent's Permitted

Discretion. The Borrowers shall reimburse the Administrative Agent for all reasonable costs and expenses associated with any such appraisals, examinations and/or audits, including, without limitation, the Administrative Agent's customary per diem charges for any employees, agents, consultant or advisors of the Administrative Agent conducting such appraisals, examinations and audits; provided, that, unless a Default or Event of Default has occurred, the Borrowers shall not be obligated to reimburse the Administrative Agent for more than one appraisal for each type of Collateral (including, without limitation, any such appraisal with respect to each of Accounts, Inventory, Real Property and equipment) during any twelve consecutive month period commencing after the Closing Date.

Section 5.3. Compliance with Laws. Except as otherwise permitted by the Bankruptcy Code or pursuant to any order of the Bankruptcy Court, which order shall be in form and substance acceptable to the Administrative Agent, each Obligor will, and will cause each of its Subsidiaries to, (a) comply in all material respects with all Requirements of Law, including without limitation Environmental Laws, (b) use and keep its assets, and require that others use and keep its assets, only for lawful purposes, without violation of any material Applicable Law, or any Applicable Law the violation of which could have a Material Adverse Effect.

Section 5.4. Payment of Taxes and Other Claims; Environmental Compliance Payments. Except to the extent subject to the automatic stay of Section 362 of the Bankruptcy Code, each Obligor will, and will cause each of its Subsidiaries to, pay or discharge, or cause to be paid or discharged, when due (or, if earlier, prior to the date on which penalties attach thereto or the obligee thereof may exercise remedies under or in respect of any Lien securing such amounts), (a) all taxes, assessments and governmental charges levied or imposed upon it or upon its income or profits, upon any properties belonging to it, (b) all federal, state, local and foreign taxes required to be withheld by it, and (c) all lawful claims for labor, materials, services and supplies which, if owing or unpaid, might by law become a Lien or charge upon any of its properties (including without limitation any claim that might result in a Lien of the types described in clause (c) of the definition of Permitted Liens); provided that, no Obligor shall be required to pay any such tax, assessment, charge or claim whose amount, applicability or validity is being contested in good faith by appropriate proceedings diligently conducted and for which such Obligor, as applicable, has set aside adequate reserves in accordance with GAAP, provided that no exercise of remedies under or in respect of any Lien securing such amounts shall have been commenced, and provided further that any Lien that arises or may exist in respect thereof is a Permitted Lien.

Section 5.5. Maintenance of Properties; Material Contracts.

(a) Except to the extent subject to the automatic stay of Section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Cases and effect thereof (including any litigation resulting therefrom), each Obligor will, and will cause each of its Subsidiaries to, keep and maintain all of its properties necessary or useful in its business in good condition, repair and working order (normal wear and tear excepted); provided, however, that nothing in this Section 5.5 shall prevent any Group Member from discontinuing the operation and maintenance of any of its properties if such discontinuance is, in the reasonable judgment of such Group Member, desirable in the conduct of its business and not disadvantageous in any respect to the Secured Parties.

(b) Except to the extent subject to the automatic stay of Section 362 of the Bankruptcy Code, excused by the Bankruptcy Code, or caused by the filing, commencement and continuation of the Chapter 11 Cases and effect thereof (including any litigation resulting therefrom), each Obligor will, and will cause each of its Subsidiaries to, maintain in full force and effect all Material

Contracts (and in furtherance thereof to fulfill of its obligations thereunder), in each case necessary or useful for the conduct of its businesses as presently conducted.

Section 5.6. Insurance. Each Obligor will, and will cause each of its Subsidiaries to, at the Group Members' expense, (i) maintain in full force and effect insurance respecting each of the Group Members and their assets 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, (ii) maintain in full force and effect (with respect to each of the Group Members) business interruption insurance, general liability insurance, product liability insurance, directors' and officers' liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation, and (iii) if at any time the area in which any Real Property encumbered by a Mortgage is located is designated (1) a "flood hazard area" in any Flood Insurance Rate Map published by the Federal Emergency Management Agency (or any successor agency), and if available in the community in which the Real Property is located, obtain flood insurance in such total amount as the Collateral Agent may from time to time require, and otherwise comply with the National Flood Insurance Program as set forth in the Flood Disaster Protection Act of 1973, as it may be amended from time to time, or (2) a "Zone 1" area, obtain earthquake insurance in such total amount as the Collateral Agent may from time to time require. All such policies of insurance shall be with responsible, financially sound and reputable insurance companies acceptable to the Administrative Agent and in such amounts, and subject to such deductibles, 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 the Administrative Agent. All property insurance policies covering the Term and Revolving Loan Priority Collateral shall be made payable first to the Collateral Agent for the benefit of the Secured Parties and, secondarily, to the ABL DIP Agent for the benefit of the ABL DIP Credit Lender and all property insurance policies covering the ABL DIP Credit Priority Collateral shall be made payable first to the ABL DIP Agent for the benefit of the ABL DIP Credit Lender and, secondarily, to the Agent for the benefit of the Secured Parties, and all in case of loss, pursuant to a standard loss payable endorsement (notwithstanding a breach of the policy by the insured party) with a standard non-contributory "lender" or "secured party" clause and shall contain such other provisions as the Administrative Agent may require to fully protect the Secured Parties' interest in the Collateral and in any payments to be made under such policies. All certificates of property insurance in respect of the Collateral and general liability insurance are to be delivered to the Collateral Agent, with loss payable or mortgagee (in respect of Collateral) and additional insured endorsements in favor of the Collateral Agent for the benefit of the Secured Parties, subject to the Intercreditor Agreement, and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to the Administrative Agent of the exercise of any right of cancellation. If any Group Member fails to maintain such insurance, the Administrative Agent may arrange for such insurance, but at the Borrowers' expense and without any responsibility on the Administrative Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Upon the occurrence of an Event of Default, the Collateral Agent shall have the sole right 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, subject to the rights of the ABL DIP Agent under the Intercreditor Agreement.

Section 5.7. Preservation of Existence. Each Borrower will, and will cause each of its Subsidiaries (subject to Section 6.7) to, preserve and maintain its corporate or limited liability company (or other organizational) existence and all of its rights, privileges and franchises necessary or desirable in the normal conduct of its business, and conduct its business in an orderly, efficient and regular manner.



Section 5.8. Subsidiaries. At the time that any Group Member forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, such Group Member shall (a) at the time of such formation or acquisition (or such later date as permitted by the Administrative Agent in its sole discretion) cause any such new Subsidiary (unless it is a CFC (as defined in the Security Agreement) and to the extent that the taking of the actions described below with respect to such Subsidiary would result in adverse tax consequences to any of the Group Members) to provide to the Administrative Agent a joinder and supplement to this Agreement substantially in the form of Exhibit C (each, a "Guaranty Supplement"), pursuant to which such Subsidiary shall agree to join as a Guarantor of the Obligations under Article IX and as an Obligor under this Agreement, a joinder to the Security Agreement, together with all other security documents (including Mortgages and other items in accordance with Section 5.11 and Section 5.14 with respect to any Real Property owned in fee of such new Subsidiary and any Leased Real Property of such Subsidiary), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and substance satisfactory to the Administrative Agent, sufficient to grant the Collateral Agent a first priority Lien (subject to Permitted Senior Liens) in and to the property of such newly formed or acquired Subsidiary, together with title insurance policies, Surveys, environmental reports, flood determinations, evidence of flood insurance (if applicable), landlord's waivers, certified resolutions and other Constituent Documents, opinions, and other documents as may be requested by the Agent, (b) at the time of such formation or acquisition (or such later date as permitted by the Administrative Agent in its sole discretion) provide to the Administrative Agent a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interests and other Equity Interests owned by the Obligors in such new Subsidiary reasonably satisfactory to the Administrative Agent (provided that if such Subsidiary is a CFC (as defined in the Security Agreement) and to the extent that a pledge of more than 65% of the outstanding voting Equity Interests in such Subsidiary would result in adverse tax consequences to any of the Group Members, no more than 65% of the outstanding voting Equity Interests in such Subsidiary shall be required to be so pledged), and (c) at the time of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) provide to the Administrative Agent all other documentation, including one or more opinions of counsel reasonably satisfactory to the Administrative Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation with respect to all Real Property with a value in excess of \$200,000 owned in fee and subject to a Mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 5.8 shall be a Loan Document. Nothing contained in this Section 5.8 shall permit the formation or acquisition of a Subsidiary to the extent not permitted by, or to the extent prohibited elsewhere in, this Agreement or any other Loan Document.

Section 5.9. Permits. Each Group Member will, and will cause each of its Subsidiaries to, obtain all Permits that are required under Applicable Law or under contract to continue to operate the business of the Group Members as currently operated, or that are otherwise required by the Administrative Agent, and in furtherance thereof to make all necessary or appropriate filings with, and give all required notices to, Government Authorities in respect thereof.

Section 5.10. Lender Group Meetings. The Administrative Borrower will (and will cause key management of each Group Member to), within 30 days after any request of the Administrative Agent, hold a meeting (at a mutually agreeable location and time or, at the option of the Agent, by conference call) with all Secured Parties who choose to attend such meeting, at which meeting shall be reviewed the financial results and financial condition of the Group Members and such other matters as the Administrative Agent may reasonably request; provided, that, unless a Default or Event of Default exists, no more than two such meetings shall be required, and in addition thereto, no more than two such lender calls, during any twelve consecutive month period commencing after the Closing Date.

Section 5.11. Real Estate.

(a) From and after the date hereof, in the event that (i) any Borrower or other Obligor acquires (x) in fee, any Real Property with a value in excess of \$200,000, or (y) by lease, any Real Property in connection with which the gross rental payments are in excess of \$100,000 annually and for which the term of the leasehold (giving effect to any renewals and extensions at the option of the Obligors) is two years or longer, or (ii) at the time any Person becomes a Borrower or other Obligor, such Person owns or holds any Real Property (excluding any Real Property in respect of which the Administrative Agent determines, in its sole discretion, that the provision of a Mortgage (any such Real Property not so excluded, an "Additional Mortgaged Property")), the Administrative Borrower shall grant (or cause the relevant Obligor to grant), within 30 days (subject to extension by the Administrative Agent in the Administrative Agent's sole discretion) after such Person acquires or holds such Real Property or becomes an Obligor, as the case may be, a security interest in and Mortgage on such Additional Mortgaged Property *mutatis mutandis*, in respect of such Additional Mortgaged Property as the Administrative Agent may require.

(b) Except to the extent subject to the automatic stay of Section 362 of the Bankruptcy Code or excused by the Bankruptcy Code, each Obligor shall make all payments and otherwise perform all obligations in respect of all Leases to which the Obligor or any of its Subsidiaries is a party, keep such Leases in full force and effect and not allow such Leases to lapse or be terminated or any rights to renew such Leases to be forfeited or cancelled, notify the Administrative Agent of any default by any party with respect to such Leases and cooperate with the Administrative Agent in all respects to cure any such default, and cause each of its Subsidiaries to do so.

Section 5.12. Deposit Accounts and Securities Accounts; Cash Management.

(a) Each Obligor shall maintain its deposit accounts and securities accounts in a manner satisfactory to the Administrative Agent, subject to an acceptable cash management system that provides the Collateral Agent with perfection of its Lien on and in the funds on deposit in any deposit account under the UCC pursuant to Control Agreements and is otherwise as set forth on Schedule 5.12, as such Schedule may be updated from time to time by the Administrative Agent in its sole discretion (the "Acceptable Cash Management System"). Prior to any Obligor's establishment or acquisition of any deposit account or securities account after the date of this Agreement (other than Excluded Accounts (as defined in the Security Agreement)), the Administrative Borrower shall arrange for the delivery to the Administrative Agent of a Control Agreement with respect to such deposit account or securities account. Prior to any Obligor's (i) establishment or acquisition of any deposit account or securities account after the date of this Agreement, that is a Non-Controlled Account, or (ii) transfer of any funds from any account to any Non-Controlled Account, or (iii) changing banking practices for any facility from the deposit of funds into banking accounts governed by a Control Agreement to the depositing of any funds into Non-Controlled Accounts, in each case in clause (i), (ii) and (iii) the Administrative Borrower shall obtain the prior written consent of the Administrative Agent.

(b) There shall not be on deposit in any Non-Controlled Accounts any funds of any Group Member. Promptly after the Closing Date each Obligor shall, and shall cause each of its Subsidiaries to, cause all payments on Accounts and all payments constituting proceeds of Inventory and other Collateral in the form in which such payments are made, whether by cash, check, credit card sales drafts, credit card sales, charge slips or any other manner whatsoever (collectively, "Receipts"), to be sent directly into deposit accounts that are subject to Control Agreements and are part of the Acceptable Cash Management System. If and to the extent that

any Receipts come into the possession or control of any of the Obligors, all such Receipts shall be held in trust for the Collateral Agent as the property of the Agent, for the benefit of the Secured Parties, and shall be promptly deposited into one or more deposit accounts subject to a Control Agreement.

(c) Subject to the rights of the Obligors hereunder, the Obligors agree that all deposits made in, and payments made to, a deposit account and other funds received and collected by the Agent, whether on the Accounts or as proceeds of Inventory or other Collateral or otherwise, except for Excluded Accounts (as defined in the Security Agreement) shall be the collateral of the Collateral Agent and the ABL DIP Agent, subject to the Intercreditor Agreement, under the sole dominion and control of the ABL DIP Agent or the Agent.

(d) The Borrowers jointly and severally agree to reimburse the Administrative Agent on demand for any amounts owed or paid to any financial institution or other Person involved in the transfer of funds to or from the deposit accounts arising out of the Administrative Agent's payments to or indemnification of such financial institution or other Person. The obligation of the Borrowers to reimburse the Administrative Agent, for such amounts pursuant to this Section 5.12, shall survive the termination or non-renewal of this Agreement.

Section 5.13. Inventory Sold on Consignment. Prior to or simultaneously with any Obligor selling Inventory to any third party on consignment ("Consigned Goods"), the Obligors shall have taken all steps necessary, including the filing of UCC-1 financing statements and the giving of notices in accordance with the UCC, to perfect its security interest in such Consigned Goods. No later than 10 calendar days after receipt of such Consigned Goods by the applicable consignee, the Administrative Agent shall have received copies of all UCC-1 and other financing statements filed in favor of any Borrower with respect to each location, if any, at which Consigned Goods may be located.

Section 5.14. Further Assurances. In connection with this Agreement and the transactions contemplated hereby, each Obligor will execute and deliver any additional documents and instruments and perform any additional acts that may be necessary or appropriate, in the Administrative Agent's Permitted Discretion, to effectuate and perform its obligations under this Agreement and the other Loan Documents and the transactions contemplated hereby and thereby, including execution, delivery and filing, where applicable, of all documents requested by the Administrative Agent or Collateral Agent appropriate to grant and perfect Liens on all property of the Obligors in favor of the Collateral Agent to secure the Obligations, having first priority (subject only to Permitted Senior Liens).

Section 5.15. ERISA Compliance.

(a) The Administrative Borrower will not, and will not permit any member of the Controlled Group to, incur any accumulated funding deficiency with the meaning of ERISA, or any material liability to the PBGC or fail to make any minimum required contribution (under Section 430 of the IR Code) with respect to any Pension Plan.

(b) The Administrative Borrower will furnish to the Administrative Agent (i) as soon as possible and in any event within five (5) Business Days after a Responsible Officer knows of any Reportable Event with respect to any ERISA Plan, a statement of a Responsible Officer, setting forth details as to such Reportable Event and the action that the Administrative Borrower proposes to take with respect thereto, together with a copy of the notice of such Reportable Event given to the PBGC if a copy of such notice is available to the Administrative Borrower, and (ii) promptly after receipt thereof, a copy of any notice the Administrative Borrower or any member of the Controlled Group may receive from the PBGC or the IRS with respect to any ERISA Plan

administered by the Administrative Borrower or any other member of the Controlled Group; provided that clause (ii) shall not apply to notices of general application promulgated by the PBGC or the IRS.

(c) The Administrative Borrower will promptly notify the Administrative Agent of any taxes, fines or penalties assessed or proposed to be assessed against the Administrative Borrower or other member of the Controlled Group by the IRS or the U.S. Department of Labor with respect to any ERISA Plan as a result of a violation of the IR Code or ERISA.

(d) The Administrative Borrower will, as soon as practicable, and in any event within five (5) Business Days after the Administrative Borrower becomes aware that an ERISA Event has occurred, provide the Administrative Agent with a certificate of a Responsible Officer setting forth the details of the event and the action the Administrative Borrower proposes to take with respect thereto.

(e) The Administrative Borrower will, at the request of the Administrative Agent, deliver, or cause to be delivered, to the Administrative Agent true and correct copies of any documents relating to any ERISA Plan.

Section 5.16. [Reserved].

Section 5.17. [Reserved].

Section 5.18. Milestones. The Administrative Borrower shall comply with the milestones set forth in Schedule 5.18 with respect to the Bayside Sale (the "Milestones").

Section 5.19. Chief Restructuring Officer. Borrowers will continue to appoint, retain and engage a representative of Alvarez & Marsal to serve as chief restructuring officer on terms and conditions acceptable to the Administrative Agent, which will include, without limitation, assisting Borrowers in the management of their businesses, preparation of forecasts and projections, and the formulation and implementation of strategic initiatives in connection with the Chapter 11 Cases. Borrowers hereby and will continue to authorize and instruct the chief restructuring officer to (a) share with the Administrative Agent and Lenders all budgets, records, projections, financial information, reports and other information relating to the Collateral, the financial condition, operations and the sale, marketing or reorganization process of the Borrowers' businesses and assets as requested from time to time, except to the extent access to such information would compromise the Borrowers' attorney-client privilege and (b) make himself available to the Administrative Agent and the Lenders as reasonably requested by the the Administrative Agent and the Lenders. Borrowers will provide the chief restructuring officer, complete access to all of the Borrowers' books and records, all of Borrowers' premises and to Borrowers' management as and when deemed necessary by the chief restructuring officer or the Administrative Agent.

## **ARTICLE VI**

### **NEGATIVE COVENANTS**

From the date of this Agreement and thereafter until the Commitments are terminated or expire, and the Loans and all other Obligations have been paid in full, unless the Required Lenders shall otherwise expressly consent in writing:

Section 6.1. Liens. The Obligors will not, and will not permit any Subsidiary to, (i) create, incur or suffer to exist any Lien upon or on any assets (including any document or instrument in respect of goods or accounts receivable) of any Obligor or any such Subsidiary, now owned or hereafter acquired, or file or permit the filing of, or permit to remain in effect, any financing statement or other similar notice of any Lien with respect to any such asset, income or profits under the UCC or under any similar recording or notice statute, except for Permitted Liens, or permit any such Lien to have priority over the Liens on the Collateral created by the Loan Documents other than Permitted Senior Liens, or permit any such Lien to have priority over the Liens on the Collateral created by the ABL DIP Credit Documents other than Permitted Senior Liens and the Liens created by the Loan Documents, or (ii) enter into, or suffer to exist, any control agreements (as such term is defined in the UCC), other than Control Agreements entered into pursuant to this Agreement or the Security Agreement or the ABL DIP Credit Agreement or other ABL DIP Credit Documents.

The prohibition provided for in this Section 6.1 specifically includes, without limitation, any effort by the Borrower, any Committee, or any other party-in-interest in any Chapter 11 Case to create any Liens that prime, or are senior or pari passu with, any claims, Liens or interests of the Agent and Lenders (other than for the Carve-Out and the Liens with respect to the ABL DIP Credit Priority Collateral) irrespective of whether such claims, Liens or interests may be "adequately protected".

Section 6.2. Debt; Surety Bonds. The Obligors will not, and will not permit any Subsidiary to, incur, create, assume, permit or suffer to exist, any Debt, except for Permitted Debt. The Obligors will not, and will not permit any Subsidiary to, be or remain liable with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee or similar obligations (whether or not drawn) except for Permitted Surety Bonds in an aggregate amount not in excess of \$30,000,000 at any time.

Section 6.3. Investments. The Obligors will not, and will not permit any Subsidiary to, directly or indirectly, purchase or hold beneficially any Equity Interests or other securities or Debt of, make or permit to exist any loans or advances to, or create or acquire any Subsidiary or acquire all or substantially all the business, property or fixed assets of, or any division or line of business of, or make any other investment or acquire any other interest whatsoever in, any other Person, except:

- (a) investments in cash and Cash Equivalents that are subject to a Control Agreement;
- (b) Intercompany Debt owed by (i) an Obligor to another Obligor, (ii) a Non-Obligor to another Non-Obligor, or (iii) an Obligor to a Non-Obligor; provided, that all Intercompany Debt owing from an Obligor to another Obligor or to a Non-Obligor shall be subject to the terms of the Intercompany Subordination and Payment Agreement;
- (c) investments in existence on the date of this Agreement and listed on Schedule 6.3;
- (d) investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business;
- (e) advances made in connection with purchases of goods or services in the ordinary course of business;
- (f) investments received in settlement of amounts due to any Obligor or any of its Subsidiaries effected in the ordinary course of business or owing to any Obligor or any of its Subsidiaries as a result of insolvency proceedings involving an account debtor or upon the foreclosure or enforcement of any Lien in favor of an Obligor or its Subsidiaries;

- (g) [Reserved];
- (h) [Reserved];
- (i) deposits of cash outstanding on the Petition Date made in the ordinary course of business to secure performance of operating leases;
- (j) [Reserved];
- (k) [Reserved];
- (l) Permitted LC Collateral; and
- (m) [Reserved].

Section 6.4. Restricted Payments; Payments on Subordinated Debt and Other Debt.

(a) The Obligors will not, and will not permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any Restricted Payments or set aside funds for the making of Restricted Payments, except, so long as no Default or Event of Default has occurred and is continuing or would be caused thereby:

(i) distributions and dividends by any Subsidiaries of the Administrative Borrower to any Obligor; and

(ii) [Reserved].

(b) Subject to Section 6.4(c), the Obligors will not, and will not permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for (i) any payment or prepayment, redemption, retirement, defeasance or acquisition of or with respect to (A) any Subordinated Debt or (B) any Permitted Debt referred to in clauses (a), (b), (f) or (g) of the definition thereof, or (ii) any scheduled payment, redemption or retirement of or with respect to any Subordinated Debt

(c) The Obligors will not, and will not permit any Subsidiary to, directly or indirectly, declare, order, pay, make or set apart any sum for any payment or prepayment, redemption, retirement, defeasance or acquisition of or with respect to the 2011 Convertible Subordinated Debentures.

Section 6.5. Sale or Transfer of Assets; Suspension of Business Operations. The Obligors will not, and will not permit any Subsidiary to, directly or indirectly, Dispose of all or any part of their properties or any interest therein (whether in one transaction or in a series of transactions) to any other Person, or materially reduce, or suspend, their business activities except in connection with a transaction permitted by Section 6.7; provided, however, that the restrictions contained in this Section 6.5 shall not apply to:

- (a) the conveyance, lease or transfer of all or part of its properties by (i) an Obligor to another Obligor, (ii) a Non-Obligor to an Obligor, or (iii) a Non-Obligor to another Non-Obligor;

- (b) sales of Inventory to non-Affiliates in the ordinary course of business upon fair and reasonable terms not less favorable to the applicable Obligor or such Subsidiary than could be obtained on an arm's-length basis from another unrelated third party;
- (c) sales or leases to non-Affiliates of surplus, obsolete or worn out assets, not used or useful in such Obligor's business, in the ordinary course of business; provided that the aggregate fair market value of all such property so disposed of by the Obligors, at the time of disposal, shall not exceed \$200,000 in any fiscal year;
- (d) Intercompany Debt permitted under Section 6.3;
- (e) [Reserved];
- (f) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of this Agreement or the other Loan Documents;
- (g) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business;
- (h) [Reserved];
- (i) [Reserved];
- (j) [Reserved];
- (k) [Reserved];
- (l) [Reserved];
- (m) [Reserved];
- (n) [Reserved];
- (o) [Reserved];
- (p) [Reserved];
- (q) [Reserved]; and
- (r) the Bayside Sale.

Section 6.6. Restrictions on Issuance and Sale of Subsidiary Stock; Agreements Binding on Subsidiaries. The Obligors will not, and will not permit any Subsidiary to, directly or indirectly:

- (a) issue or sell any Equity Interests of any class of any Subsidiary to any Person other than an Obligor;
- (b) Dispose of any Equity Interests of any class of any Subsidiary; or
- (c) enter into, or be otherwise subject to, any instrument, contract or other agreement (including its Constituent Documents), or any other obligation or constraint, that limits the amount of or otherwise imposes restrictions on:

(i) the payment of dividends and distributions by any Subsidiary of the Administrative Borrower to the Administrative Borrower or any other such Subsidiary;

(ii) the payment or prepayment by any Subsidiary of the Administrative Borrower of any Debt owed to the Administrative Borrower or any other such Subsidiary;

(iii) the making of loans or advances by any Subsidiary of the Administrative Borrower to the Administrative Borrower or any other such Subsidiary;

(iv) the transfer by any Subsidiary of the Administrative Borrower of its property to the Administrative Borrower or any other such Subsidiary; or

(v) the merger or consolidation of any Subsidiary of the Administrative Borrower with or into the Administrative Borrower or any other such Subsidiary;

provided that the foregoing shall not prohibit restrictions and conditions imposed by: (A) Applicable Laws which (taken as a whole) could not reasonably be expected to have a Material Adverse Effect, (B) the Loan Documents, and (C) the ABL DIP Credit Documents as in effect on the date hereof.

Section 6.7. Consolidation, Dissolution, Amalgamation and Merger; Fundamental Changes; Asset Acquisitions; Officer Appointments. The Obligors will not, and will not permit any Subsidiary to, alter the corporate, capital or legal structure of any Obligor or any of its Subsidiaries, consolidate or amalgamate with or merge into any Person, or permit any other Person to merge into it, or liquidate, wind-up or dissolve itself (or suffer any liquidation or dissolution), or reorganize or recapitalize, or acquire (in a transaction analogous in purpose or effect to a consolidation or merger) all or substantially all the assets of any other Person, or change its name or conduct its business under a fictitious name, or change its tax, charter or other organizational identification number, or change its form or state of organization.

Section 6.8. Restrictions on Nature of Business. The Obligors will not, and will not permit any Subsidiary to, acquire assets in, or engage, in any line of business materially different from that in which the Obligors are presently engaged (or that is reasonably related thereto or a logical extension thereof), and will not purchase, lease, license or otherwise acquire assets not related to such business. The Obligors will not make or permit any change in the manner in which they operate business transactions between the Obligors, on the one hand, and the Non-Obligors, on the other hand, that could reasonably be expected to be adverse to the interests of the Agent or the Secured Parties.

Section 6.9. Prohibition of Entering into Negative Pledge Arrangements. The Obligors will not, and will not permit any Subsidiary to, enter into any agreement, bond, note or other instrument with or for the benefit of any Person other than the Secured Parties which would:

(a) prohibit such Obligor or such Subsidiary from granting, or otherwise limit the ability of such Obligor or such Subsidiary to grant, to the Agent or the Secured Parties or the ABL DIP Agent or the ABL DIP Credit Lender any Lien on any assets or properties of such Obligor or such Subsidiary, except that the documents pertaining to the Permitted PMM/Capital Lease Debt may prohibit Liens on the permitted assets securing or otherwise related to such Permitted PMM/Capital Lease Debt; or

(b) be violated or breached by the Obligors' performance of their obligations under the Loan Documents or the ABL DIP Credit Documents.



Section 6.10. Accounting. The Obligors will not, and will not permit any Subsidiary to, adopt any material change in accounting principles, other than as required by GAAP, or adopt, permit or consent to any change in its fiscal year from the year ending on the last Saturday in April of each year, except with the consent of the Administrative Agent, or enter into, modify, or terminate any agreement currently existing, or at any time hereafter entered into with any third party accounting firm or service bureau for the preparation or storage of any Group Member's accounting records without said accounting firm or service bureau agreeing to provide Agent information regarding the Group Members' financial condition.

Section 6.11. Hazardous Substances. The Obligors will not, and will not permit any Subsidiary to, cause or permit any Hazardous Substances to be disposed of in any manner which might result in any liability to any Group Member, on, under or at any Real Property which is operated by any Group Member or in which any Group Member has any interest (including, but not limited to, as owner, tenant, lessee, sublessee or otherwise).

Section 6.12. Transactions with Affiliates. The Obligors will not, and will not permit any Subsidiary to, enter into or be a party to any transaction or arrangement, including, without limitation, the purchase, sale, lease, license, transfer or exchange or other Disposition of property, the rendering of any service or the payment of any management fees, with any Affiliate, except:

- (a) (i) transactions between or among the Obligors not involving any other Affiliate, (ii) transactions between or among Obligors and Non-Obligors in the ordinary course of business on terms no less favorable to the Obligors than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate, and (iii) transactions between or among Non-Obligors;
- (b) any Debt permitted under clauses (a) or (c) of the defined term Permitted Debt;
- (c) any payment permitted by Section 6.4;
- (d) [Reserved];
- (e) [Reserved];
- (f) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between School Specialty or its Subsidiaries, on the one hand, and any Affiliate of School Specialty or its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to the Administrative Agent prior to the consummation thereof, if they involve one or more payments by School Specialty or its Subsidiaries in excess of \$250,000 for any single transaction or series of related transactions, and (ii) are no less favorable, taken as a whole, to School Specialty or its Subsidiaries, as applicable, than would be obtained in a comparable arm's length transaction with a Person that is not an Affiliate;
- (g) so long as it has been approved by School Specialty's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any indemnity provided for the benefit of directors (or comparable managers) of School Specialty or its applicable Subsidiary; and
- (h) so long as it has been approved by School Specialty'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 executive officers and outside directors of School Specialty and its Subsidiaries.

Each Obligor will cause each of its Non-Obligor Subsidiaries to comply with all of the terms of the Intercompany Subordination and Payment Agreement. Notwithstanding anything contained in this Agreement to the contrary, (x) except for Intercompany Debt permitted under Section 6.3(b), no Obligor shall enter into any transaction with, make any loan, advance or other investment in, or otherwise transfer any property to any Non-Obligor, and (y) the Obligors shall not directly or indirectly declare, order, pay, make or set apart any sum for any payment or prepayment, redemption, retirement, defeasance or acquisition of or with respect to Intercompany Debt owed by any Obligor to any Non-Obligor, except in an aggregate amount not in excess of \$250,000 over the term of this Agreement.

Section 6.13. No Amendments of Organization Documents, Material Contracts or ABL DIP Credit Documents. The Obligors will not, and will not permit any Subsidiary to, amend, supplement, terminate, suspend or otherwise modify in any way (a) any Constituent Documents pertaining to any Group Member or (b) any Material Contract in any manner that could be adverse to the Secured Parties or that could have a Material Adverse Effect. The Obligors will not, and will not permit any Subsidiary to, agree to any amendment or other modification, refinancing, extension or renewal of, or waive any of their respective rights under, the ABL DIP Credit Documents except as permitted under the Intercreditor Agreement (as in effect on the date hereof). Without limiting the foregoing, the Obligors will not, and will not permit any Subsidiary to, amend or otherwise modify, refinance, extend or renew or otherwise change the terms of any other Debt listed on Schedule 6.2, or make any payment consistent with an amendment, refinancing, extension or renewal thereof or change thereto, if the effect of such amendment, refinancing, extension or renewal or change is to increase the interest rate on, or fees or premiums payable with respect to, such Debt, change (to earlier dates) any dates upon which payments of principal or interest are due thereon, make more restrictive any covenant or other agreement of any Obligor or Subsidiary thereunder, change any event of default or condition to an event of default with respect thereto (other than to eliminate any such event of default or increase any grace period related thereto), change the redemption, prepayment or defeasance provisions thereof, change the subordination provisions thereof (or of any guaranty thereof), or change any collateral therefor (other than to release such collateral), or if the effect of such amendment or change, together with all other amendments or changes made, is to increase materially the obligations of the obligor thereunder or to confer any additional rights on the holders of such Debt (or a trustee or other representative on their behalf) which would be adverse to any Obligor or to the Secured Parties, in each case as determined by the Administrative Agent in its sole discretion.

Section 6.14. No Sale-Leaseback Transactions. The Obligors will not, and will not permit any Subsidiary to, directly or indirectly, become or remain liable as lessee or as a guarantor or other surety with respect to any lease (including without limitation, a Lease), whether an operating lease or a capitalized lease, of any property (whether real, personal or mixed), whether now owned or hereafter acquired, (i) that any Group Member has sold or transferred or is to sell or transfer to any other Person (other than any other Group Member) or (ii) that any Group Member intends to use for substantially the same purpose as any other property that has been or is to be sold or transferred by any Group Member to any Person (other than any Group Member) in connection with such lease, in each case except for those lease transactions existing as of the Closing Date and set forth on Schedule 6.14.

Section 6.15. Anti-Terrorism Laws. The Obligors will not, and will not permit any Subsidiary to, knowingly (i) conduct any business or engage in any transaction or dealing with any Blocked Person, including making or receiving any contribution of funds, goods or services to or for the benefit of any Blocked Person, (ii) deal in, or otherwise engage in any transaction relating to, any property or interests in property blocked pursuant to the Executive Order No. 13224; or (iii) engage in or conspire to engage in any transaction that evades or avoids, or has the purpose of evading or avoiding, or attempts to violate,

any of the prohibitions set forth in the Executive Order No. 13224 or the USA Patriot Act. The Obligors shall deliver to the Administrative Agent any certification or other evidence reasonably requested from time to time by the Administrative Agent in its sole discretion, confirming the Obligors' and their Subsidiaries' compliance with this Section 6.15.

Section 6.16. Total Outstanding ABL DIP Amount. The Obligors will not permit the Total Outstanding ABL DIP Amount to exceed \$175,000,000.

Section 6.17. [Reserved].

Section 6.18. [Reserved].

Section 6.19. [Reserved].

Section 6.20. [Reserved].

Section 6.21. [Reserved].

Section 6.22. [Reserved].

Section 6.23. Inventory at Bailees. The Administrative Borrower will not, and will not permit any of its Subsidiaries to, store any of its Inventory at any time with a bailee, warehouseman, or similar party except to the extent the aggregate amount of such Inventory does not exceed \$38,000,000 during the period commencing on May 1st through September 30 of each year and does not exceed \$10,000,000 at any other time.

Section 6.24. Maximum ABL Outstandings. The Borrowers will not permit the aggregate amount of (x) ABL DIP Credit Loans and LC Obligations outstanding under the ABL DIP Credit Documents, (y) loans, outstanding letters of credit and reimbursement obligations in respect of drawn letters of credit under any replacement or refinancing of the ABL DIP Credit Documents, and (z) fees payable by the Group Members in connection with the foregoing, at any time to exceed 107.5% of the amount, at such time, of the Stated Borrowing Base.

Section 6.25. Proceeds of Term and Revolving Loan Priority Collateral. The Borrowers will not permit any Net Cash Proceeds of any Dispositions of property of the Obligors constituting Term and Revolving Loan Priority Collateral (including without limitation from a Carson-Dellosa Drag-Along Sale) to fail to be deposited, immediately upon receipt thereof by any Group Member, in the Term and Revolving Loan Priority Collateral Deposit Account. In the case of any Disposition (or series of related Dispositions) of property of the Obligors that includes assets constituting Term and Revolving Loan Priority Collateral, for which the aggregate consideration received by the Obligors exceeds \$50,000, the Obligors shall (x) no later than two Business Days prior to consummation of such Disposition or of the first Disposition in such series, notify in writing each of the Agent and the ABL DIP Agent, and such notice shall specify (1) the property to be so Disposed of, and the portion of such property constituting Term and Revolving Loan Priority Collateral, (2) the aggregate consideration to be received by the Obligors in connection with such Disposition or Dispositions, (3) the amount of the Net Cash Proceeds to be received by the Obligors in connection with such Disposition or Dispositions, and (4) the amount of the Net Cash Proceeds to be received by the Obligors in connection with such Disposition or Dispositions that is to be deposited in the Term and Revolving Loan Priority Collateral Deposit Account, and (y) immediately upon receiving any Net Cash Proceeds in respect of such Disposition or Dispositions, notify in writing each of the Agent and the ABL DIP Agent, and such notice shall specify (1) the amount of the Net Cash Proceeds so received by the Obligors, and (2) the amount of the Net Cash Proceeds so received

by the Obligors that has been deposited in the Term and Revolving Loan Priority Collateral Deposit Account.

Section 6.26. Select Agendas Legal Opinion. The Borrowers will not permit the revenues of Select Agendas, Corp. (or any successor entity) to exceed \$5,000,000 in any trailing twelve month period, prior to the date on which the Agent shall have received (x) the executed and favorable legal opinions of Nova Scotia counsel (or other applicable local counsel, in the case of a successor entity) to Select Agendas, Corp. (or such successor entity), addressing such matters as the Administrative Agent may reasonably request, and (y) executed and, if applicable, notarized security documentation under the laws of Quebec, effective to grant and perfect a Lien in all property of Select Agendas, Corp. (or such successor entity) under the laws of Quebec in favor of the Collateral Agent to secure the Obligations, together with the executed and favorable legal opinions of Quebec counsel to Select Agendas, Corp. (or such successor entity), addressing such matters as the Administrative Agent may reasonably request.

Section 6.27. Premier School Agendas Investments. Notwithstanding anything else to the contrary in this Agreement, the Borrowers will not permit Premier School Agendas, Ltd. or any other Non-Obligor to (x) make a Restricted Payment to any Obligor constituting (or giving such Obligor any right to receive from Premier School Agendas, Ltd. or any other Non-Obligor) cash or Cash Equivalents, or (y) make any loan or advance to, or investment of cash or Cash Equivalents in, any Obligor.

Section 6.28. Chapter 11 Claims. The Borrowers will not, and will not permit any Borrower to, incur, create, assume, suffer to exist or permit any other super priority claim or Lien on any Collateral which is pari passu with or senior to the Obligations (or the Liens securing the Obligations) hereunder, except in each case for the Carve Out, and Liens with respect to the ABL DIP Credit Priority Collateral.

Section 6.29. Prohibited Use of Proceeds. Unless and to the extent provided in the DIP Order, the Borrowers will not, and will not permit any Borrower (a) to, use any cash or Cash Equivalents (including any proceeds of the Loans) to fund any objection, proceeding or other litigation (i) against the Administrative Agent, the Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, (ii) challenging the validity, perfection, priority, extent or enforceability of the Liens or security interests granted to the Administrative Agent, the Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders, or (iii) challenging, disputing or objecting to the claims of the Administrative Agent, the Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders or (b) to use the proceeds of any Loan to (i) repay or prepay any of the Debt under the Prepetition ABL Credit Documents or the ABL DIP Credit Documents (including any interest, fees, costs and expenses, tax or indemnification obligations) or (ii) any Taxes incurred upon or as a result of the Disposition of the ABL DIP Credit Priority Collateral.

Section 6.30. Amendments to the DIP Order. The Borrowers will not, and will not permit any Borrower to, in each case itself or on its behalf, amend, supplement or otherwise modify the DIP Order without the written consent of the Administrative Agent, in its sole discretion.

Section 6.31. Variance Test. Borrowers will not permit

(a) (i) the aggregate amount of the actual receipts of the type set forth in the line item "Collections" on the accepted thirteen-week cash flow forecast under the Approved Budget during any first fiscal week of any fiscal month of the Administrative Borrower (the first such fiscal week ending on February 2, 2013) (each, a "Single Test Week") to be less than 25% of the budgeted amount, or (ii) the average amount of such actual receipts in any rolling two fiscal week period of any fiscal month of the Administrative Borrower (for the avoidance of doubt, such rolling two fiscal week period ends on the end of the second, third, fourth and (if applicable) fifth

fiscal week of each fiscal month) (each, a "Rolling Two Week Test Period") to be less than 20% of the average budgeted amounts for such period, in each case of (i) and (ii), set forth in the line item "Collections" on the accepted thirteen-week cash flow forecast under the Approved Budget;

(b) the average amount of the actual disbursements of the type set forth in the line item "Payroll" on the accepted thirteen-week cash flow forecast under the Approved Budget in any Rolling Two Week Test Period to exceed 10% of the average of the budgeted amounts for such period set forth in the line item "Payroll" on the accepted thirteen-week cash flow forecast under the Approved Budget;

(c) (i) the aggregate amount of the actual disbursements of the type set forth in any of the line items "Debtor Professional Fees", "Professional Fees for Unsecured Creditors", "AP Disbursement" and "Total Disbursements" on the accepted thirteen-week cash flow forecast under the Approved Budget in any Single Test Week to exceed 15% of the budgeted amount, or (ii) the average amount of each type of such disbursements in any Rolling Two Week Test Period to exceed 10% of the average of the budgeted amounts for such period, in each case of (i) and (ii), set forth in the corresponding line item "Debtor Professional Fees", "Professional Fees for Unsecured Creditors", "AP Disbursement" and "Total Disbursements" on the accepted thirteen-week cash flow forecast under the Approved Budget;

(d) (i) the sum of the aggregate amounts of the actual disbursements of the types set forth in line items "Debtor Professional Fees", "Professional Fees for Unsecured Creditors" and "Restructuring/Other Profess. Fees" on the accepted thirteen-week cash flow forecast under the Approved Budget (the "Professional Fees Line Items") in any Single Test Week to exceed 15% of sum of the budgeted amounts, or (ii) the average amount of the sum of such types of disbursements in any Rolling Two Week Test Period to exceed 10% of the average of the sum of the budgeted amounts for such period, in each case of (i) and (ii), set forth in the Professional Fees Line Items on the accepted thirteen-week cash flow forecast under the Approved Budget, or

(e) (i) the aggregate amount of the actual net cash flows of the type set forth in any of the line items "Net Cash Flows" on the accepted thirteen-week cash flow forecast under the Approved Budget during any Single Test Week to be less than 15% of the budgeted amount, or (ii) the average amount of such type of net cash flows in any Rolling Two Week Test Period to be less than 15% of the average of the budgeted amounts for such period, in each case of (i) and (ii), set forth in the corresponding line item "Net Cash Flows" on the accepted thirteen-week cash flow forecast under the Approved Budget.

## **ARTICLE VII**

### **EVENTS OF DEFAULT; RIGHTS AND REMEDIES**

Section 7.1. Events of Default. "Event of Default", wherever used herein, means any one of the following events or circumstances:

(a) Failure to pay any principal of any Loan or Note, in each case when the same becomes due and payable (whether at stated maturity or due date, on demand, upon acceleration or otherwise); or

(b) Failure to pay any interest on any Loan or Note or other Obligation, or any fees, costs, expenses, indemnities, reimbursements or other amounts required to be paid by any Obligor under this Agreement or any other Loan Document, in each case when the same becomes due and payable (whether at stated maturity or due date, on demand, upon acceleration or otherwise); or

(c) (i) Any Group Member shall default in the performance of, or breach, any covenant or other agreement on the part of, or applicable to, such Group Member contained in this Agreement or any other Loan Document (other than a covenant or agreement a default in whose performance or whose breach is elsewhere in this Section 7.1 specifically dealt with), and, solely in the case of a default in the performance of the provisions in Sections 5.2, 5.3, 5.4, 5.5, 5.11(b), 5.14, such default and all consequences thereof have not been cured within five (5) days; or (ii) any Default or default or Event of Default or event of default shall occur under any ABL DIP Credit Documents; or

(d) Except pursuant to a valid, binding and enforceable termination or release permitted under the Loan Documents and executed by the Administrative Agent or as otherwise expressly permitted under any Loan Document, (i) any provision of any Loan Document shall, at any time after the delivery of such Loan Document, fail to be valid and binding on, or enforceable against, any Obligor party thereto, (ii) any Loan Document purporting to grant a Lien to secure any Obligation shall, upon or at any time after the delivery of such Loan Document, fail to create a valid and enforceable Lien on any Collateral or such Lien shall fail or cease to be a perfected Lien with the priority required in the relevant Loan Document, (iii) any subordination provision pertaining to Subordinated Debt shall, in whole or in part, terminate or otherwise fail or cease to be valid and binding on, or enforceable against, any holder of Subordinated Debt or any trustee or representative thereof, or (iv) any Group Member, or any Affiliate thereof, shall assert that any of the events described in clause (i), (ii) or (iii) above shall have occurred or exist, or shall contest the validity or enforceability of any Loan Document, or of any such Lien or subordination provision; or the perfection or priority of any such Lien; or

(e) [Reserved]; or

(f) Any representation, warranty or certification made, or deemed made, by or on behalf of any Group Member (or any of the officers of any such entity) in this Agreement or any other any Loan Document (including pursuant to any request for Loans), or in any other certificate, instrument, or statement contemplated by or made or delivered pursuant to or in connection with any Loan Document, shall prove to have been untrue or incorrect in any material respect (of if such representation is subject to materiality exceptions, in any respect) when made or deemed made; or

(g) After the Petition Date, one or more judgments, orders, decrees, writs, or warrants of attachment or execution (or other similar process) shall be rendered against any Group Member or issued or levied against a substantial part of the property of any Group Member (i) (A) in the case of money judgments, orders and decrees, involving an aggregate amount (excluding amounts adequately covered by insurance payable to any Group Member, to the extent the relevant insurer has confirmed in writing coverage and liability therefor) in excess of \$200,000 for all Group Members in the aggregate, or (B) otherwise, that would have, in the aggregate, a Material Adverse Effect and (ii) (A) enforcement proceedings shall have been commenced by any creditor upon any such judgment, order, decree, writ, warrant or similar process or (B) such judgment, order, decree, writ, warrant or similar process shall not have been vacated or discharged for a period of 20 consecutive days and there shall not be in effect (by reason of a pending appeal or otherwise) any stay of enforcement thereof; or

(h) Any Group Member is convicted of, or admits in writing its culpability for, a violation of (i) any criminal statute (or non-statutory Applicable Law relating to criminal offenses) in any jurisdiction constituting a felony offense or, whether or not a felony offense, an act of fraud, money laundering, larceny or similar offense or (ii) any statute or other Applicable Law, if

forfeiture of, or the imposition of a Lien or other claim by any Person (other than the Collateral Agent) on or in respect of, any Collateral is a possible remedy or penalty that may lawfully be sought for such violation; or

(i) After the Petition Date, any Group Member (i) fails to make any payment when due (whether by scheduled maturity, required prepayment, acceleration, demand, or otherwise) in respect of any Debt incurred or arising after the Petition Date (other than the Obligations) having an aggregate principal amount (including undrawn committed or available amounts and including amounts owing to all creditors under any combined or syndicated credit arrangement) of more than \$200,000, or in respect of any other material contractual obligation or agreement of such Group Member incurred or arising after the Petition Date (including any Material Contract), and such failure continues after the applicable grace or notice period, if any, specified in the document relating thereto on the date of such failure; or (ii) fails to perform or observe any other condition or covenant incurred or arising after the Petition Date under any agreement or instrument relating to any such Debt, contractual obligation or other agreement, or any other event shall occur or condition exist under any agreement or instrument relating to any such Debt, contractual obligation or other agreement, that is a default or event of default thereunder or gives rise to a right of any other Person to terminate any such agreement or accelerate any such Debt; or (iii) permits to occur or exist after the Petition Date any default or early termination event with respect to any Hedge Agreement to which any Group Member is a party under which the aggregate liability of the Group Members is more than \$200,000, other than (x) any default arising prior to the Petition Date, (y) due to the filing, commencement and continuation of the Chapter 11 Cases and any litigation resulting therefrom), or (z) due to restrictions on payments arising thereby; or

(j) Any occurrence of one or more ERISA Events that, either individually or in the aggregate, (a) have had or could reasonably be expected to result in a Liability in excess of \$50,000 or (b) result in a Lien on any of the assets of any Group Member; or

(k) Any Group Member incurring or becoming liable for, or (except to the extent disclosed on Schedule 4.12) being liable for or suffering to exist, any Environmental Liability (i) that, individually or in the aggregate together with all other such Environmental Liabilities of the Group Members taken as a whole, could reasonably be expected to have a Material Adverse Effect or result in a material diminution of the value of the Collateral, or (ii) in an aggregate amount, collectively for all such Environmental Liabilities, in excess of \$50,000; or

(l) Except to the extent permitted by Section 6.5 or Section 6.7, any Group Member shall liquidate, dissolve, terminate or suspend its business operations or any substantial part thereof or otherwise fail to operate its business in the ordinary course (except for the filing, commencement and continuation of the Chapter 11 Cases and events that customarily result from the filing, commencement and continuation of the Chapter 11 Cases), or shall sell all or a material part of its assets, or a material part of its property or business is taken, lost or impaired through condemnation or otherwise, the loss of which could reasonably be expected to have a Material Adverse Effect, or the management of any Group Member or is displaced of its authority in the conduct of its business or such business is curtailed or materially impaired, whether by action of any Governmental Authority or otherwise; or

(m) A Change of Control shall occur; or

(n) A Material Adverse Effect shall occur; or

(o) There shall occur one or more casualty or condemnation losses (excluding amounts adequately covered by insurance payable to any Group Member, to the extent the relevant insurer has confirmed in writing coverage and liability therefor) in an aggregate amount in excess of \$200,000 in connection with the properties of the Group Members; or

(p) Any scheduled or non-scheduled payment, redemption, retirement, or other satisfaction of or with respect to any principal, interest or other amount payable on or with respect to any Subordinated Debt shall occur; or

(q) [Reserved]; or

(r) A Cash Dominion Event shall occur; or

(s) There shall have occurred any of the following in any Chapter 11 Case:

(i) the bringing of a motion, taking of any action or the filing of any plan of reorganization or disclosure statement attendant thereto, in each case, by any Obligor in any Chapter 11 Case, or the entry of any order by the Bankruptcy Court in any Chapter 11 Case: (w) to obtain additional financing under Section 364(c) or (d) of the Bankruptcy Code not otherwise permitted pursuant to this Agreement or that does not provide for the repayment of all Obligations under this Agreement in full in cash; (x) to grant any Lien other than Liens expressly permitted under this Agreement upon or affecting any Collateral; (y) except as provided in the Interim or Final Order, as the case may be, to use cash collateral of Agent under Section 363(c) of the Bankruptcy Code without the prior written consent of the Agent and the Required Lenders; or (z) that (in the case of any Obligor) requests or seeks authority for or that (in the case of an order entered by the Bankruptcy Court on account of a request by any Obligor) approves or provides authority to take any other action or actions adverse to the Agent and the Lenders or their rights and remedies hereunder or their interest in the Collateral;

(ii) the filing of any plan of reorganization or disclosure statement attendant thereto, or any direct or indirect amendment to such plan or disclosure statement, by any Obligor which does not provide for the repayment of all Obligations under this Agreement in full in cash on the "Effective Date" of such plan and to which the Agent and the Required Lenders do not consent or otherwise agree to the treatment of their claims or the termination of any Obligor's exclusive right to file and solicit acceptances of a plan of reorganization;

(iii) the entry of an order in any of the Chapter 11 Cases confirming a plan or plans of reorganization that does not (a) contain a provision for repayment in full in cash of all of the Obligations under this Agreement on or before the effective date of such plan or plans and (b) provide for the continuation of the Liens and security interests granted to the Collateral Agent for the benefit of the Lenders and priority until the Obligations have been paid in full;

(iv) the entry of an order amending, supplementing, staying, vacating or otherwise modifying any Loan Document or the Interim Order or the Final Order in any case without the prior written consent of Agent and the Required Lenders;

(v) the Final Order is not entered within thirty (30) days (or such other period as Agent and Required Lenders may agree to in writing) following the entry of the Interim Order;

(vi) the payment of, or application by any Obligor for authority to pay, any pre-petition claim without the Agent's and Required Lenders' prior written consent other than as



provided in any "first day order" in form and substance acceptable to Required Lenders and as set forth in the Approved Budget or unless otherwise permitted under this Agreement;

(vii) the entry of an order by the Bankruptcy Court appointing, or the filing of an application by any Obligor, for an order seeking the appointment of, in either case with the consent of the Required Lenders, an interim or permanent trustee in any Chapter 11 Case or the appointment of a receiver or an examiner under section 1104 of the Bankruptcy Code in any Chapter 11 Case with expanded powers (beyond those set forth in sections 1106(a)(3) and 1106(a)(4) of the Bankruptcy Code) to operate or manage the financial affairs, the business, or reorganization of the Borrowers or with the power to conduct an investigation of (or compel discovery from) Agent or Lenders or against Prepetition Term Loan Agent or Prepetition Term Loan Lenders under the Prepetition Term Loan Documents; or the sale without the Agent's and Required Lenders' consent, of all or substantially all of a Borrower's assets either through a sale under section 363 of the Bankruptcy Code, through a confirmed plan of reorganization in the Chapter 11 Cases, or otherwise that does not provide for payment in full in cash of the Obligations;

(viii) the dismissal of any Chapter 11 Case which does not contain a provision for payment in full in cash of all noncontingent monetary Obligations of the Borrowers hereunder, or if any Obligor shall file a motion or other pleading seeking the dismissal of any Chapter 11 Case which does not contain a provision for payment in full in cash of all noncontingent monetary Obligations of the Borrowers hereunder;

(ix) the conversion of any Chapter 11 Case from one under chapter 11 to one under chapter 7 of the Bankruptcy Code or any Obligor shall file a motion or other pleading seeking the conversion of any Chapter 11 Case under section 1112 of the Bankruptcy Code or otherwise;

(x) the entry of an order by the Bankruptcy Court granting relief from or modifying the automatic stay of Section 362 of the Bankruptcy Code (x) to allow any creditor to execute upon or enforce a Lien on any Collateral, or (y) with respect to any Lien of or the granting of any Lien on any Collateral to any state or local environmental or regulatory agency or authority;

(xi) the entry of an order in any Chapter 11 Case avoiding or requiring repayment of any portion of the payments made on account of the Obligations owing under this Agreement or the other Loan Documents;

(xii) the failure of any Obligor to perform any of its obligations under the Interim Order or the Final Order or any violation of any of the terms of the Interim Order or the Final Order;

(xiii) the challenge by any Obligor to the validity, extent, perfection or priority of any liens granted under the Prepetition Term Loan Documents;

(xiv) the remittance, use or application of the proceeds of Collateral other than in accordance with cash management procedures and agreements acceptable to Agent;

(xv) the use of cash collateral of the Prepetition Agents and Prepetition Debt Holders for any purpose other than to pay expenditures set forth in the Approved Budget;

(xvi) the entry of an order in any of the Chapter 11 Cases granting any other super priority administrative claim or Lien equal or superior to that granted to Agent, on behalf of itself

and Lenders without the consent in writing of Agent and Required Lenders other than Liens with respect to the ABL DIP Credit Priority Collateral;

(xvii) the filing of a motion by any Obligor requesting, or the entry of any order granting, any super-priority claim which is senior or pari passu with the Lenders' claims or with the claims of the Prepetition Debt Holders under the Prepetition Debt Documents;

(xviii) the entry of an order precluding the Agent or Prepetition Term Loan Agent to have the right to or be permitted to "credit bid";

(xix) the obtaining of additional financing or the granting of Liens not expressly permitted hereunder;

(xx) the use of cash collateral without the prior written consent of the Agent and Required Lenders;

(xxi) any attempt by an Obligor to reduce, set off or subordinate the Obligations or the Liens securing such Obligations to any other Debt;

(xxii) the reversal, vacation or stay of the effectiveness of either the Interim Order or the Final Order;

(xxiii) the payment of or granting adequate protection (except for Adequate Protection Payments) with respect to any Prepetition Indebtedness (other than with respect to payment permitted under any "first day order" in form and substance satisfactory to the Lenders or as set forth in the Interim Order or the Final Order);

(xxiv) an application for any of the orders described in this Section 7.1(s) including, without limitation, clauses (i), (iii), (iv), (viii), (ix), (x), (xi) (xvi) or (xviii) shall be made by a Person other than the Agent or the Lenders and such application is not contested by the Borrowers in good faith and the relief requested is granted in an order that is not stayed pending appeal;

(xxv) the cessation of Liens or super-priority claims granted with respect to this Agreement to be valid, perfected and enforceable in all respects; or

(xxvi) the Bankruptcy Court shall cease to have exclusive jurisdiction with respect to all matters relating to the exercise of rights and remedies under the Loan Documents, the DIP Order, DIP Liens and the Collateral;

(xxvii) the challenge by any Obligor to the validity, extent and enforceability of the "Early Payment Fee" that became payable under and as defined in the Prepetition Term Loan Agreement; or

(t) A representative of Alvarez & Marsal ceases to serve as chief restructuring officer and the Administrative Borrower fails to appoint a replacement reasonably acceptable to the Lenders within seven days following such cessation of service.

Section 7.2. Rights and Remedies. Upon the occurrence and during the continuance of an Event of Default (unless waived in writing by the Required Lenders), the Administrative Agent may upon

five (5) days' written notice to the Administrative Borrower (and, upon written request of the Required Lenders, the Administrative Agent shall) exercise any or all of the following rights and remedies:

- (a) declare all or any portion of the Commitments, if then in effect, to be terminated, whereupon the same shall forthwith terminate;
- (b) declare all or any portion of the unpaid principal amount of the Loans, all interest accrued and unpaid thereon, and all other Obligations to be forthwith immediately due and payable or otherwise accelerated, whereupon the Loans, all such accrued interest and all such other Obligations shall become and be forthwith due and payable, without presentment, demand, protest or further notice of any kind, all of which are hereby expressly waived by each Obligor;
- (c) apply any and all monies owing by any Secured Party to any Group Member to the payment of the Loans, including interest accrued thereon, or to payment of any or all other Obligations then owing by the Obligors;
- (d) exercise and enforce the rights and remedies available to the Agent, the Lenders or any other Secured Party under any Loan Document and under Applicable Law, including all rights and remedies with respect to the Collateral under the Loan Documents and under Applicable Law; and
- (e) exercise any other rights and remedies available to the Agent (including, without limitation, hereunder and under any other Loan Documents), the Lenders or any other Secured Party under Applicable Law, any Loan Document or otherwise.

Such rights and remedies include the rights (subject to the provisions of the Intercreditor Agreement, where applicable) to (i) take possession of any Collateral; (ii) require the Obligors to assemble Collateral, at the Obligors' expense, and make it available to the Collateral Agent at a place designated by the Collateral Agent; (iii) enter any premises where Collateral is located and store Collateral on such premises until sold (and if the premises are owned or leased by an Obligor, such Obligor agrees not to charge for such storage); and (iv) Dispose of any Collateral in its then condition, or after any further manufacturing or processing thereof, at public or private sale, with such notice as may be required by Applicable Law, in lots or in bulk, and at such locations, all as the Collateral Agent, in its discretion, deems advisable. Each Obligor agrees that 10 days' notice of any proposed Disposition of Collateral by the Collateral Agent shall be reasonable. The Collateral Agent shall have the right to conduct such sales on any Obligor's premises, without charge, and such sales may be adjourned from time to time in accordance with Applicable Law. The Collateral Agent shall have the right to Dispose of any Collateral for cash, credit or any combination thereof, and the Collateral Agent may purchase any Collateral at public or, if permitted by law, private sale and, in lieu of actual payment of the purchase price, may "credit bid" or otherwise set off the amount of such price against the Obligations.

Each Obligor hereby agrees that: (a) so long as the Agent complies with its obligations, if any, under the Code, the Agent, the Lenders, and the other Secured Parties shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by the Obligors.

At any time during an Event of Default, the Agent, the Lenders, the other Secured Parties and any of their Affiliates are authorized, to the fullest extent permitted by Applicable Law, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time

held and other obligations (in whatever currency) at any time owing by the Agent, such Lender, such other Secured Party or such Affiliate to or for the credit or the account of an Obligor against any Obligations, irrespective of whether or not the Agent, such Lender, such other Secured Party or such Affiliate shall have made any demand under this Agreement or any other Loan Document and although such Obligations may be contingent or unmatured or are owed to a branch or office of the Agent, such Lender, such other Secured Party or such Affiliate different from the branch or office holding such deposit or obligated on such obligation. The rights of the Agent, each Lender, each such other Secured Party and each such Affiliate under this Section are in addition to other rights and remedies (including other rights of setoff) that such Person may have.

## **ARTICLE VIII**

### **AGREEMENT AMONG LENDERS AND AGENT**

Section 8.1. Authorization; Powers. (a) Each Lender irrevocably appoints and authorizes the Administrative Agent to act as administrative agent, and the Collateral Agent to act as collateral agent, for and on behalf of such Lender to the extent provided herein, in any Loan Documents (including by way of acting as "Secured Party" under any Loan Document relating to Collateral) or in any other document or instrument delivered hereunder or in connection herewith, and to take such other actions as may be reasonably incidental thereto. The Administrative Agent agrees to act as administrative agent for each Lender, and the Collateral Agent agrees to act as collateral agent for each Lender, upon the express conditions contained in this Article VIII, but in no event shall the Agent constitute a fiduciary of any Lender, nor shall the Agent have any fiduciary responsibilities in respect of any Lender. In furtherance of the foregoing, and not in limitation thereof, each Lender irrevocably (a) authorizes the Agent to execute and deliver and perform those obligations under each of the Loan Documents to which the Agent is a party as are specifically delegated to the Agent, and to exercise all rights, powers and remedies as may be specifically delegated hereunder or thereunder, together with such additional powers as may be reasonably incidental thereto, (b) appoints the Agent as nominal beneficiary or nominal secured party, as the case may be, under the Loan Documents and all related UCC financing statements (to the extent of the collateral security granted with respect to the Obligations), and (c) authorizes the Agent to act as agent of and for such Lender for purposes of holding, perfecting and Disposing of Collateral under the Loan Documents. As to any matters not expressly provided for by the Loan Documents, the Agent shall not be required to exercise any discretion or take any action, but shall be required to act or to refrain from acting (and shall be fully protected in so acting or refraining from acting) upon the instructions of the Required Lenders or, if so required pursuant to Section 10.2, upon the instructions of all Lenders; provided, however, that except for action expressly required of the Agent hereunder, the Agent shall in all cases be fully justified in failing or refusing to act hereunder unless it shall be indemnified to its satisfaction by the Lenders against any and all liability and expense which may be incurred by it by reason of taking or continuing to take any such action, and the Agent shall not in any event be required to take any action which is contrary to the Loan Documents or Applicable Law.

(b) The Lenders hereby irrevocably authorize Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrowers of all of the Obligations, (ii) constituting property being Disposed of if a release is required or desirable in connection therewith and if Administrative Borrower certifies to Agent that the Disposition is permitted under Section 6.5 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which School Specialty or its Subsidiaries owned no interest at the time Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to School Specialty or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Obligors and the Lenders hereby irrevocably authorize Agent, based upon the instruction of the Required Lenders, to (a) consent to, credit bid or purchase (either directly or through one or more acquisition

vehicles) all or any portion of the Collateral at any sale thereof conducted under the provisions of the Bankruptcy Code, including under Section 363 of the Bankruptcy Code, (b) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any Disposition thereof conducted under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, or (c) credit bid or purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral at any other sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. In connection with any such credit bid or purchase, (i) the Obligations owed to the Lenders shall be entitled to be, and shall be, credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims being estimated for such purpose if the fixing or liquidation thereof would not unduly delay the ability of Agent to credit bid or purchase at such Disposition of the Collateral and, if such claims cannot be estimated without unduly delaying the ability of Agent to credit bid, then such claims shall be disregarded, not credit bid, and not entitled to any interest in the asset or assets purchased by means of such credit bid) and the Lenders whose Obligations are credit bid shall be entitled to receive interests (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) in the asset or assets so purchased (or in the Equity Interests of the acquisition vehicle or vehicles that are used to consummate such purchase), and (ii) Agent, based upon the instruction of the Required Lenders, may accept non-cash consideration, including debt and equity securities issued by such acquisition vehicle or vehicles and in connection therewith Agent may reduce the Obligations owed to the Lenders (ratably based upon the proportion of their Obligations credit bid in relation to the aggregate amount of Obligations so credit bid) based upon the value of such non-cash consideration. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by Agent or Administrative Borrower at any time, the Lenders will confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 8.1(b); provided, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Obligor in respect of) all interests retained by any Loan Party, including, the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted PMM/Capital Lease Debt.

(c) Agent shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by School Specialty or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral

in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise provided herein.

Section 8.2. Application of Proceeds. The Agent, after deduction of any costs of collection, as provided in Section 8.5, shall remit to each Lender (to the extent a Lender is to share therein and subject to the provisions of Section 2.10(f)) that Lender's pro rata share of all payments of principal, interest, premiums and fees payable hereunder in accordance with such Lender's appropriate Percentage. Each Lender's interest under the Loan Documents shall be payable solely from payments, collections and proceeds actually received by the Agent under the Loan Documents; and the Agent's only liability to a Lender with respect to any such payments, collections and proceeds shall be to account for such Lender's Percentage of such payments, collections and proceeds in accordance with this Agreement. If the Agent is required for any reason to refund any such payments, collections or proceeds, each Lender will refund to the Agent, upon demand, its Percentage of such payments, collections or proceeds, together with its Percentage, or share, as applicable, of interest or penalties, if any, payable by the Agent in connection with such refund. If any Lender has wrongfully refused to fund its Percentage of any Loans, or if the outstanding principal balance of the Loans made by any Lender is for any other reason less than its respective Percentage of the aggregate principal balance of all Loans, the Agent may remit payments received by it to the other Lenders until such payments have reduced the aggregate amounts owed by the Borrowers to the extent that the aggregate amount of the Loans owing to such Lender hereunder are equal to its Percentage of the aggregate amounts of the Loans owing to all of the Lenders hereunder. The foregoing provision is intended only to set forth certain rules for the application of payments, proceeds and collections in the event that a Lender has breached its obligations hereunder and shall not be deemed to excuse any Lender from such obligations.

Section 8.3. Exculpation. The Agent shall not be liable for any action taken or omitted to be taken by the Agent in connection with the Loan Documents, except for its own gross negligence, fraud or willful misconduct. The Agent shall be entitled to rely upon advice of counsel concerning legal matters, the advice of independent public accountants with respect to accounting matters and advice of other experts as to any other matters and upon any Loan Document and any schedule, certificate, statement, report, notice or other writing which it reasonably believes to be genuine or to have been presented by a proper Person. Neither the Agent nor any of its Affiliates or any of its or their respective directors, officers, employees or agents shall be responsible or in any way liable with respect to or for (a) any recitals, representations or warranties contained in, or for the execution, legality, validity, genuineness, sufficiency, effectiveness or enforceability of any Loan Document, or any other instrument or document delivered hereunder or in connection herewith, (b) the validity, genuineness, perfection, priority, effectiveness, enforceability, existence, value or enforcement of any Collateral, or (c) except for its own gross negligence, fraud or willful misconduct, any action taken or omitted by it. The designation of Bayside (or any successor thereto as Agent) as Agent hereunder shall in no way impair or affect any of the rights and powers of, or impose any duties or obligations upon, Bayside (or such successor thereto) in its individual capacity as Lender hereunder.

Section 8.4. Use of the term "Agent". The term "Agent" is used herein in reference to the Agent merely as a matter of custom. It is intended to reflect only an administrative relationship between the Agent and the Lenders, in each case as independent contracting parties. However, the obligations of the Agent shall be limited to those expressly set forth herein and in no event shall the use of such term create or imply any fiduciary relationship or any other obligation arising under the general law of agency.

Section 8.5. Reimbursement for Costs and Expenses. All payments, collections and proceeds received or effected by the Agent may be applied first to pay or reimburse the Agent for all reasonable costs and expenses at any time incurred by or imposed upon the Agent in connection with this Agreement or any other Loan Document (including but not limited to all reasonable attorney's fees), foreclosure or

liquidation expenses and advances made to protect the security of any collateral (to the extent of the collateral security is granted with respect to the Obligations). If the Agent does not receive payments, collections or proceeds sufficient to cover any such costs and expenses within five (5) days after their incurrence or imposition, each Lender shall, upon demand, remit to the Agent such Lender's Percentage of the difference between (i) such costs and expenses and (ii) such payments, collections and proceeds, together with interest on such amount for each day following the thirtieth day after demand therefor until so remitted at a rate equal to the Federal Funds Rate for each such day.

Section 8.6. Payments Received Directly by Lenders. If any Lender shall obtain any payment or other recovery (whether voluntary, involuntary, by application of offset or otherwise) on account of any Loan or on account of any interest, premium or fees under this Agreement (other than through distributions made in accordance with Section 8.2 hereof) in excess of such Lender's applicable Percentage with respect to the Loan, such Lender shall promptly give notice of such fact to the Agent and shall promptly remit to the Agent such amount as shall be necessary to cause the remitting Lender to share such excess payment or other recovery ratably with each of the Lenders in accordance with their respective applicable Percentages, together with interest for each day on such amount until so remitted at a rate equal to the Federal Funds Rate for each such day; provided, however, that if all or any portion of the excess payment or other recovery is thereafter recovered from such remitting Lender or holder, the remittance shall be restored to the extent of such recovery.

Section 8.7. Indemnification. Each Lender severally, but not jointly, hereby agrees to indemnify and hold harmless the Agent, as well as the Agent's agents, employees; officers and directors, ratably according to their respective Percentages from and against any and all losses, liabilities (including liabilities for penalties), actions, suits, judgment, demands, damages, costs, disbursements, or expenses (including attorneys' fees and expenses, and costs of in-house counsel) of any kind or nature whatsoever, which are imposed on, incurred by, or asserted against the Agent or its agents, employees, officers or directors in any way relating to or arising out of the Loan Documents, or as a result of any action taken or omitted to be taken by the Agent; provided, however, that no Lender shall be liable for any portion of any such losses, liabilities (including liabilities for penalties), actions, suits, judgments, demands, damages, costs disbursements, or expenses resulting from the gross negligence, fraud or willful misconduct of the Agent.

Section 8.8. Agent and Affiliates. Bayside (and any successor thereto as Agent) shall have the same rights and powers in its capacity as a Lender hereunder as any other Lender and may exercise or refrain from exercising the same as though it were not the Agent, and Bayside (or such successor) and its affiliates may accept deposits from and generally engage in any kind of business with the Group Members or their Affiliates as fully as if Bayside (or such successor) were not the Agent hereunder.

Section 8.9. Credit Investigation. Each Lender acknowledges that it has made such inquiries and taken such care on its own behalf as would have been the case had its Loans made directly by such Lender to the Borrowers without the intervention of the Agent or any other Lender. Each Lender agrees and acknowledges that the Agent and each other Lender makes no representations or warranties about the creditworthiness of the Obligor or any other party to this Agreement or with respect to or for (a) any recitals, representations or warranties contained in, or for the execution, legality, validity, genuineness, sufficiency, effectiveness or enforceability of any Loan Document, or any other instrument or document delivered hereunder or in connection herewith, (b) the validity, genuineness, perfection, priority, effectiveness, enforceability, existence, value or enforcement of any Collateral.

Section 8.10. Defaults. The Agent shall have no duty to inquire into any performance or failure to perform by the Group Members and shall not be deemed to have knowledge of the occurrence of a Default or an Event of Default (other than under Sections 7.1(a) or 7.1(b)) hereof unless the Agent

has received notice from a Lender or a Borrower specifying the occurrence of such Default or Event of Default. In the event that the Agent receives such a notice of the occurrence of a Default or an Event of Default, the Agent shall give prompt notice thereof to the Lenders. In the event of any Default, the Agent shall (subject to Section 8.7 hereof) (a) in the case of a Default that constitutes an Event of Default, not take any of the actions referred to in Section 7.2(b) hereof unless so directed by the Required Lenders, and (b) in the case of any Default or Event of Default, take such actions with respect to such Default as shall be directed by the Required Lenders; provided that, unless and until the Agent shall have received such directions, the Agent may take any action, or refrain from taking any action, with respect to such Default or Event of Default as it shall deem advisable in the best interest of the Lenders.

Section 8.11. Obligations Several. The obligations of each Lender hereunder are the several obligations of such Lender, and neither any Lender nor the Agent shall be responsible for the obligations of any other Lender hereunder, nor will the failure by the Agent or any Lender to perform any of its obligations hereunder relieve the Agent or any other Lender from the performance of its respective obligations hereunder. Nothing contained in this Agreement, and no action taken by any Lender or the Agent pursuant hereto or in connection herewith or pursuant to or in connection with the Loan Documents shall be deemed to constitute the Lenders, together or with or without the Agent, as a partnership, association, joint venture, or other entity.

Section 8.12. Sale or Assignment; Addition of Lenders. Except as permitted under the terms and conditions of this Section 8.12, no Lender may sell, assign or transfer its rights or obligations under this Agreement or such Lender's Notes or Loans or Commitment.

(i) Subject to the conditions set forth in paragraph (a)(ii) below, any Lender may at any time upon at least five Business Day's advance notice to the Administrative Agent and the Administrative Borrower assign to one or more assignees that (x) is a domestic or foreign bank (having a branch office in the United States), an insurance company, a hedge fund or analogous investment fund, an Approved Fund or any other financial institution (provided that such proposed assignee, if other than a fund, has capital and surplus, or in the case of a fund (other than an Approved Fund), has, together with all other funds under common management, investment assets, as applicable, in excess of \$250 million), and (y) is not an Obligor or a Group Member or an Affiliate of any of the foregoing or a natural person or a competitor of any Group Member whose primary business competes in the same business segment and in the same geographic area as the Group Members (any such bank, insurance company, fund or Approved Fund meeting the foregoing requirements, an "Applicant") on any date (the "Adjustment Date") selected by such Lender, all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment, the Revolving Notes and Revolving Loans and Term Note and Term Loan at the time owing to it) with the prior written consent of:

(A) the Administrative Borrower (such consent not to be unreasonably withheld or delayed); provided that no consent of the Administrative Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or, if a Default or Event of Default has occurred and is continuing, any other assignee; and

(B) the Administrative Agent (which consent of the Administrative Agent may be withheld or given in the Administrative Agent's sole discretion); provided that no consent of the Administrative Agent shall be required for an assignment of all or any portion of a Note or Loan to a Lender, an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:



(A) except in the case of any assignment made in connection with an assignment of the entire remaining amount of the assigning Lender's Commitment and Notes and Loans at the time owing to it or in the case of an assignment to a Lender or an Affiliate of a Lender or an Approved Fund with respect to a Lender, the aggregate amount of the Commitment or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Revolving Loans and Term Loan of the assigning Lender subject to each such assignment (determined as of the date the Assignment Certificate with respect to such assignment is delivered to the Administrative Agent or, if "Trade Date" is specified in the Assignment Certificate, as of the Trade Date) shall not be less than \$1.0 million, unless each of the Administrative Agent and, so long as no Default has occurred and is continuing, Administrative Borrower otherwise consents (each such consent not to be unreasonably withheld or delayed);

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with respect to the Term Loan, Term Commitment, Revolving Loans or the Revolving Commitment, as applicable, assigned;

(C) the Administrative Agent, the assigning Lender and such Applicant shall, on or before the Adjustment Date, execute and deliver to the Administrative Agent an Assignment Certificate in substantially the form of Exhibit G (an "Assignment Certificate");

(D) if requested by the Administrative Agent, each Borrower will execute and deliver to the Administrative Agent, for delivery by the Administrative Agent in accordance with the terms of the Assignment Certificate, (i) a new Revolving Note or Term Note, as applicable, payable to the order of the Applicant in the amount corresponding to the applicable Term Loan or Revolving Loan acquired by such Applicant and (ii) a new Revolving Note or Term Note payable to the order of the assigning Lender in the amount corresponding to the retained Term Loan or Revolving Loan. Such new Term Notes or Revolving Notes shall be in an aggregate principal amount equal to the principal amount of the Term Notes or Revolving Notes to be replaced by such new Term Notes or Revolving Notes, shall be dated the effective date of such assignment and shall otherwise be in the form of the Term Note or Revolving Note to be replaced thereby. Such new Term Notes or Revolving Notes shall be issued in substitution for, but not in satisfaction or payment of, the Term Note or Revolving Note being replaced thereby and such new Term Notes or Revolving Notes shall be treated as a Term Note or Revolving Note) for all purposes of this Agreement; and

(E) the assigning Lender shall pay to the Administrative Agent an administrative fee of \$3,500.

(iii) Any assignment or purported assignment to any Person that is not an Eligible Assignee shall be null and void. Upon the execution and delivery of such Assignment Certificate and such new Term Notes or Revolving Notes, and effective as of the effective date thereof (A) this Agreement shall be deemed to be amended to the extent, and only to the extent, necessary to reflect the addition of such additional Lender and the resulting adjustment of the Percentages arising therefrom, (B) the assigning Lender shall be relieved of all obligations hereunder to the extent of the reduction of the assigning Lender's Percentage, and (C) the Applicant shall become a party hereto and shall be entitled to all rights, benefits and privileges accorded to a Lender herein and in each other Loan Document or other document or instrument executed pursuant

hereto and subject to all obligations of a Lender hereunder, including, without limitation, the right to approve or disapprove actions which, in accordance with the terms hereof, require the approval of the Required Lenders or all Lenders. In order to facilitate the addition of additional Lenders hereto, the Administrative Borrower (subject to its approval rights hereunder, if any) and the Lenders shall cooperate fully with the Administrative Agent in connection therewith and shall provide all reasonable assistance requested by the Administrative Agent relating thereto, including, without limitation, the furnishing of such written materials and financial information regarding the Group Members as the Administrative Agent may reasonably request, the execution of such documents as the Administrative Agent may reasonably request with respect thereto, and the participation by officers of the Administrative Borrower and the Lenders at reasonable times and places in a meeting or teleconference call with any Applicant upon the reasonable request of the Administrative Agent.

Section 8.13. Participation. In addition to the rights granted in Section 8.12, each Lender may, upon the prior written consent of the Administrative Agent (which consent may be given or withheld in Agent's sole discretion), grant participations in all or a portion of its Term Note and Term Loans or Revolving Note and Revolving Loans to any domestic or foreign commercial bank (having a branch office in the United States), insurance company, financial institution or an Affiliate of such Lender pursuant to documentation delivered to and deemed acceptable to the Administrative Agent. No holder of any such participation shall be entitled to require any Lender to take or omit to take any action hereunder, except that a Lender selling a participation may agree with the participant that such Lender will not, without such participant's consent, take any action which would, in the case of any principal, interest, premium or fee in which the participant has an ownership or beneficial interest: (a) extend the final maturity of any Loans or extend the Maturity Date, (b) reduce the interest rate on the Loans or the amount of any premium or fee payable in respect of the Loans, (c) forgive any principal of, or interest on, the Loans, or any premium or fees payable in respect thereof, or (d) release all or substantially all of any Collateral for the Loans. The Lenders shall not, as among the Borrowers, the Agent and the Lenders, be relieved of any of their respective obligations hereunder as a result of any such granting of a participation. Each Obligor hereby acknowledges and agrees that any holder of a participation described in this Section 8.13 may rely upon, and possess all rights under, any opinions, certificates, or other instruments or documents delivered under or in connection with any Loan Document. Except as set forth in this Section 8.13, no Lender may grant any participation in its Notes or Loans.

Section 8.14. Withholding Tax Exemption. At least five (5) Business Days prior to the first date on which interest or premium or fees are payable hereunder for the account of any Lender, each Lender that is not incorporated under the laws of the United States of America, or a state thereof, agrees that it will deliver to the Administrative Borrower and the Administrative Agent two duly completed copies of United States Internal Revenue Service Form W-8BEN or W-8ECI, certifying in either case that such Lender is entitled to receive payments under this Agreement and the Notes without deduction or withholding of any United States federal income taxes. Each Lender that so delivers a Form W-8BEN or W-8ECI further undertakes to deliver to the Administrative Borrower and the Administrative Agent two additional copies of such form (or a successor form) on or before the date that such form expires or becomes obsolete or after the occurrence of any event requiring a change in the most recent forms so delivered by it, and such amendments thereto or extensions or renewals thereof as may be reasonably requested by the Administrative Borrower or the Administrative Agent, in each case certifying that such Lender is entitled to receive payments under this Agreement and the Term Notes without deduction or withholding of any United States federal income taxes, unless an event (including without limitation any change in treaty, law or regulation) has occurred prior to the date on which any such delivery would otherwise be required that renders all such forms inapplicable or that would prevent such Lender from duly completing and delivering any such form with respect to it and such Lender advises the

Administrative Borrower and the Administrative Agent that it is not capable of receiving payments without any deduction or withholding of United States federal income tax.

Section 8.15. Agent's Counsel. In connection with the negotiation, drafting and execution of this Agreement and the other Loan Documents, perfecting any security interest, completing any filings or registrations and in connection with future legal representation relating to loan administration, amendments, modifications, waivers, forbearance or enforcement of remedies, any law firm engaged by the Agent (the "Agent Firm") has only represented and shall only represent the Agent (or its Affiliates), in its/their capacity as Agent or as a Lender, as applicable. Each Borrower and each other Lender hereby acknowledges, and each Assignee and Participant (by accepting an Assignment or a Participation, as provided in Sections 8.12 and 8.13 hereof) shall be deemed to acknowledge, that no Agent Firm represents it in connection with any such matters.

Section 8.16. Obligor not a Beneficiary or Party. Except with respect to the limitation of liability applicable to the Lenders under Section 8.11, the provisions and agreements in this Article VIII are solely among the Lenders and the Agent, and no Obligor shall be considered a party thereto or a beneficiary thereof.

Section 8.17. Administrative Agent and Collateral Agent May Delegate Duties. The Administrative Agent and the Collateral Agent may appoint sub-agents to exercise on their behalf any of their respective duties, obligations or rights under the Loan Documents, and each such sub-agent shall have all of the rights and benefits of the Administrative Agent or Collateral Agent, as applicable, under this Article VIII. Each of the Administrative Agent and the Collateral Agent shall not be responsible for the negligence or misconduct of any sub-agents selected by it with reasonable care, except as otherwise provided in Section 8.3.

Section 8.18. Collateral Matters.

(a) The Lenders hereby irrevocably authorize the Collateral Agent, at its option and in its sole discretion, to release any Lien on any Collateral (i) upon the termination of the Commitments, and payment and satisfaction in full in cash by the Borrowers of all Obligations, (ii) constituting property being Disposed of if a release is required or desirable in connection therewith and if the Administrative Borrower certifies to the Collateral Agent that the Disposition is permitted under Section 6.5 of this Agreement or the other Loan Documents (and the Collateral Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which no Group Member owned any interest at the time the Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to a Group Member under a Lease or other lease that has expired or is terminated in a transaction permitted under this Agreement. Except as provided above, the Collateral Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders, or (z) otherwise, the Required Lenders. Upon request by the Administrative Agent or the Administrative Borrower at any time, the Lenders will confirm in writing the Collateral Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 8.18; provided, however, that (1) the Collateral Agent shall not be required to execute any document necessary to evidence such release on terms that, in the Collateral Agent's opinion, would expose the Collateral Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those expressly being released) upon (or obligations of any Obligor in respect of) all property and other interests

retained by the Obligors, including, the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral.

(b) The Agent and its Affiliates and Agent Firm and other representatives shall have no obligation whatsoever to any of the Lenders to assure that the Collateral exists or is owned by the Group Members or is cared for, protected, or insured or has been encumbered, or that the Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to the Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, the Agent may act in any manner it may deem appropriate, in its sole discretion given the Agent's own interest in the Collateral in its capacity as one of the Lenders and that the Agent shall have no other duty or liability whatsoever to any Lender as to any of the foregoing, except as otherwise expressly provided herein.

Section 8.19. Agency for Perfection. The Collateral Agent hereby appoints each other Lender as its agent (and each Lender hereby accepts such appointment) for the purpose of perfecting the Agent's Liens in property that, in accordance with Article VIII or Article IX, as applicable, of the Code can be perfected only by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify the Administrative Agent thereof, and, promptly upon the Administrative Agent's request therefor shall deliver possession or control of such Collateral to the Collateral Agent or in accordance with the Administrative Agent's instructions.

Section 8.20. Field Audits and Examinations; Confidentiality; Disclaimers by Lenders. By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that the Administrative Agent furnish such Lender, promptly after it becomes available, a copy of each completed field audit or examination report respecting the Group Members (each a "Report" and collectively, "Reports") prepared by or at the request of the Administrative Agent, and the Administrative Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that the Administrative Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that the Administrative Agent or other party performing any audit or examination will inspect only specific information regarding the Group Members and will rely significantly upon the Group Members' books and records, as well as on representations of the Group Members' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding the Group Members and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 10.12, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold the Administrative Agent and any such other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any

loans or other credit accommodations that the indemnifying Lender has made or may make to the Borrowers, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of the Borrowers; and (ii) to pay and protect, and indemnify, defend and hold the Administrative Agent, and any such other Lender preparing a Report, harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by the Administrative Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

Section 8.21. Successor Agent. Each of the Administrative Agent and the Collateral Agent may voluntarily resign as administrative agent or collateral agent, as applicable, at any time by giving ten Business Days' prior written notice thereof to the other Agent, the Administrative Borrower and the Lenders. Upon any such notice of resignation, the Required Lenders shall have the right to appoint a successor Administrative Agent or Collateral Agent, as applicable. If no successor shall have been so appointed and shall have accepted such appointment within thirty (30) days after the retiring Agent gives notice of its resignation, then the retiring Agent may, on behalf of the Lenders, appoint a successor Agent from among the Lenders or from among those financial institutions who regularly provide such services in the New York financial markets. Upon the acceptance of any appointment as Agent hereunder by a successor Agent, that successor Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Agent and the retiring Agent shall promptly (i) transfer to such successor Agent all sums, securities and other items of collateral (if any) held by it under the Loan Documents, together with all records and other documents necessary or appropriate in connection with the performance of the duties of the successor Agent under the Loan Documents, and (ii) execute and deliver to such successor Agent such documents, and take such other actions, as may be necessary or appropriate in connection with the assignment to such successor Agent of the rights and benefits under the Loan Documents, whereupon such retiring Agent shall be discharged from its duties and obligations hereunder. After any retiring Agent's resignation hereunder as Agent, the provisions of this Article VIII shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent hereunder.

## **ARTICLE IX**

### **GUARANTY**

#### **Section 9.1. Guaranty.**

(a) Each Guarantor, and each Borrower (with respect to each other Borrower), hereby irrevocably and unconditionally guarantees to the Administrative Agent, for the benefit of the Secured Parties, the full and prompt payment when due of the Obligations, including, without limitation, any interest thereon (including, without limitation, interest, premiums and fees, as provided in this Agreement, accruing after the filing of a petition initiating any Insolvency Proceeding, whether or not such interest, premium or fees accrue or are recoverable against the Borrowers after the filing of such petition for purposes of the Bankruptcy Code or are an allowed claim in such proceeding), plus documented, reasonable attorneys' fees and expenses if the obligations represented by this Guaranty are collected by law, through an attorney-at-law, or under advice therefrom.

(b) Regardless of whether any proposed guarantor or any other Person shall become in any other way responsible to the Secured Parties, or any of them, for or in respect of the Obligations or any part thereof, and regardless of whether or not any Person now or hereafter responsible to the Secured Parties, or any of them, for the Obligations or any part thereof, whether under this Guaranty or otherwise, shall cease to be so liable, each Guarantor and each Borrower hereby declares and agrees that this Guaranty shall be a joint and several obligation, shall be a continuing

guaranty and shall be operative and binding until the Obligations shall have been indefeasibly paid in full in cash and all Commitments shall have been terminated.

(c) Each Guarantor and each Borrower absolutely, unconditionally and irrevocably waives any and all right to assert any defense (other than the defense of payment in cash in full, or performance, to the extent of its obligations hereunder, or a defense that such Guarantor's or such Borrower's liability is limited as provided in Section 9.3), set-off, counterclaim or cross-claim of any nature whatsoever with respect to this Guaranty or the obligations of the Guarantors or the Borrowers under this Guaranty or the obligations of any other Person or party (including, without limitation, the Borrowers) relating to this Guaranty or the obligations of any of the Guarantors and the Borrowers under this Guaranty or otherwise with respect to the Obligations in any action or proceeding brought by the Administrative Agent or any other Secured Party to collect the Obligations or any portion thereof, or to enforce the obligations of any of the Guarantors or the Borrowers under this Guaranty or to foreclose on any Collateral owned by any Obligor.

(d) The Secured Parties, or any of them, may from time to time, without exonerating or releasing any Guarantor or any Borrower in any way under this Agreement, including this Guaranty, (i) take such further or other security or securities for the Obligations or any part thereof as they may deem proper, or (ii) release, discharge, abandon or otherwise deal with or fail to deal with any Guarantor or guarantor or Borrower of the Obligations or any security or securities therefor or any part thereof now or hereafter held by the Secured Parties, or any of them, or (iii) amend, modify, extend, accelerate or waive in any manner any of the provisions, terms, or conditions of the Loan Documents, all as they may consider expedient or appropriate in their sole discretion. Without limiting the generality of the foregoing, or of Section 9.1(e), it is understood that the Secured Parties, or any of them, may, without exonerating or releasing any Guarantor or Borrower, give up, modify or abstain from perfecting or taking advantage of any security for or guarantee of the Obligations and accept or make any compositions or arrangements, and realize upon any security for or guarantee of the Obligations when, and in such manner, and with or without notice, all as such Person may deem expedient.

(e) Each Guarantor and each Borrower acknowledges and agrees that no change in the nature or terms of the Obligations or any of the Loan Documents, or other agreements, instruments or contracts evidencing, related to or attendant with the Obligations (including any novation), shall discharge all or any part of the liabilities and obligations of such Guarantor or Borrower pursuant to this Guaranty; it being the purpose and intent of the Guarantors, the Borrowers and the Secured Parties that the covenants, agreements and all liabilities and obligations of each Guarantor and of each Borrower hereunder are absolute, unconditional and irrevocable under any and all circumstances. Without limiting the generality of the foregoing, each Guarantor and each Borrower agrees that until each and every one of the covenants and agreements of this Guaranty is fully performed, and without possibility of recourse, whether by operation of law or otherwise, such Guarantor's or such Borrower's undertakings hereunder shall not be released, in whole or in part, by any action or thing which might, but for this paragraph of this Guaranty, be deemed a legal or equitable discharge of a surety or guarantor, or by reason of any waiver, omission of the Secured Parties, or any of them, or their failure to proceed promptly or otherwise, or by reason of any action taken or omitted by the Secured Parties, or any of them, whether or not such action or failure to act varies or increases the risk of, or affects the rights or remedies of, such Guarantor or such Borrower, or by reason of any further dealings between the Borrowers or Guarantors, on the one hand, and any Secured Party, on the other hand, or any other guarantor or surety, and such Guarantor or such Borrower hereby expressly waives and surrenders any defense to its liability hereunder, or any right of counterclaim or offset of any nature or description which it may have

or may exist based upon, and shall be deemed to have consented to, any of the foregoing acts, omissions, things, agreements or waivers.

(f) The Secured Parties, or any of them, may, without demand or notice of any kind upon or to any Guarantor or Borrower, at any time or from time to time when any amount shall be due and payable hereunder by any Guarantor or Borrower following and during the continuance of an Event of Default, if the Borrowers shall not have timely paid any of the Obligations, set-off and appropriate and apply to any portion of the Obligations hereby guaranteed, and in such order of application as the Administrative Agent may from time to time elect in accordance with this Agreement, any deposits, property, balances, credit accounts or moneys of any Guarantor or any Borrower in the possession of any Secured Party or under their respective control for any purpose. If and to the extent that any Guarantor or Borrower makes any payment to the Administrative Agent or any other Person pursuant to or in respect of this Guaranty, any claim, by subrogation, contribution or otherwise, which such Guarantor or Borrower may have against any Borrower or other Guarantor by reason thereof shall be subject and subordinate to the prior payment in full of the Obligations to the satisfaction of the Administrative Agent.

(g) Upon the bankruptcy or winding up or other distribution of assets of any Borrower, or of any surety or guarantor (other than the applicable Guarantor or other Borrower) for any Obligations of the Borrowers to the Secured Parties, or any of them, the rights of the Administrative Agent against any Guarantor or Borrower shall not be affected or impaired by the omission of any Secured Party to prove its claim, or to prove the full claim, as appropriate, against any Borrower, or any other Borrower or any such other guarantor or surety, and the Administrative Agent may prove such claims as it sees fit and may refrain from proving any claim and in its discretion may value as it sees fit or refrain from valuing any Collateral or other security held by it without in any way releasing, reducing or otherwise affecting the liability to the Secured Parties of each of the Guarantors and each of the Borrowers.

(h) Each Guarantor and each Borrower hereby absolutely, unconditionally and irrevocably expressly waives, except to the extent such waiver would be expressly prohibited by Applicable Law, the following: (i) notice of acceptance of this Guaranty, (ii) notice of the existence or creation of all or any of the Obligations, (iii) presentment, demand, notice of dishonor, protest and all other notices whatsoever (other than notices expressly required hereunder or under any other Loan Document to which any Guarantor is a party), (iv) all diligence in collection or protection of or realization upon the Obligations or any part thereof, any obligation hereunder, or any security for any of the foregoing, (v) until the Obligations shall have been paid in full in cash, all rights to enforce any remedy which the Secured Parties, or any of them, may have against any Borrower and (vi) until the Obligations shall have been paid in full in cash, all rights of subrogation, indemnification, contribution and reimbursement from the Borrowers or other Guarantors for amounts paid hereunder and any benefit of, or right to participate in, any Collateral or other security now or hereinafter held by the Secured Parties, or any of them, in respect of the Obligations. If a claim is ever made upon any Secured Party for the repayment or recovery of any amount or amounts received by such Person in payment of any of the Obligations and such Person repays all or part of such amount by reason of (A) any judgment, decree or order of any court or administrative body or other Governmental Authority having jurisdiction over such Person or any of its property, or (B) any settlement or compromise of any such claim effected by such Person with any such claimant, including any Borrower, then in such event each Guarantor and each Borrower agrees that any such judgment, decree, order, settlement or compromise shall be binding upon such Guarantor or such Borrower, notwithstanding any revocation hereof or the cancellation of any promissory note or other instrument evidencing any of the Obligations, and such Guarantor or such Borrower shall be and remain obligated to such

Person hereunder for the amount so repaid or recovered to the same extent as if such amount had never originally been received by such Person.

(i) This Guaranty is a continuing guaranty of the Obligations and all liabilities to which it applies or may apply under the terms hereof and shall be conclusively presumed to have been created in reliance hereon. No failure or delay by any Secured Party in the exercise of any right, power, privilege or remedy shall operate as a waiver thereof, and no single or partial exercise by the Administrative Agent of any right or remedy shall preclude other or further exercise thereof or the exercise of any other right or remedy and no course of dealing between any Guarantor, any Borrower and any Secured Party shall operate as a waiver thereof. No action by any Secured Party permitted hereunder shall in any way impair or affect this Guaranty. For the purpose of this Guaranty, the Obligations shall include, without limitation, all Obligations of the Borrowers to the Secured Parties, notwithstanding any right or power of any third party, individually or in the name of any Borrower or the Secured Parties, or any of them, to assert any claim or defense as to the invalidity or unenforceability of any such Obligation, and no such claim or defense shall impair or affect the obligations of any Guarantor or any Borrower hereunder.

(j) This is a guaranty of payment and not of collection. In the event the Administrative Agent makes a demand upon any Guarantor or any Borrower in accordance with the terms of this Guaranty, such Guarantor or Borrower shall be held and bound to the Administrative Agent directly as debtor in respect of the payment of the amounts hereby guaranteed. All costs and expenses, including, without limitation, reasonable attorneys' fees and expenses, incurred by the Administrative Agent in obtaining performance of or collecting payments due under this Guaranty shall be deemed part of the Obligations guaranteed hereby.

(k) Each Guarantor and each Borrower expressly represents and acknowledges that any financial accommodations by the Secured Parties to the Borrowers, including, without limitation, the extension of credit, are and will be of direct interest, benefit and advantage to such Guarantor or such Borrower.

(l) Each Guarantor and each Borrower shall be entitled to subrogation and contribution rights from and against the Borrowers to the extent any Guarantor or any Borrower is required to pay to any Secured Party any amount in excess of the Term Loans advanced directly to, or other Obligations incurred directly by, such Guarantor or Borrower or as otherwise available under Applicable Law; provided, however, that such subrogation and contribution rights are and shall be subject to the terms and conditions of this Section 9.1(l), and provided further that the payment obligation of a Guarantor or a Borrower to any other Guarantor or any other Borrower under any Applicable Law regarding contribution rights or subrogation rights or similar rights among co-obligors or otherwise is and shall be expressly subordinate and subject in right of payment to the prior indefeasible payment in full in cash of the obligations of such Guarantor or such Borrower under the other provisions of this Guaranty and the indefeasible payment in full in cash of all Obligations and termination of all Commitments, and such Guarantor or such Borrower shall not exercise any right or remedy with respect to such contribution rights or subrogation rights or similar rights until (i) payment and satisfaction in full of all such obligations and (ii) the Obligations shall have been indefeasibly paid in full in cash and all Commitments shall have been terminated.

Section 9.2. Special Provisions Applicable to Additional Guarantors. Pursuant to Section 5.8 of this Agreement, any new Subsidiary of any Obligor is required to enter into this Agreement by executing and delivering to the Administrative Agent a Guaranty Supplement. Upon the execution and delivery of a Guaranty Supplement by such new Subsidiary, such Subsidiary shall become a Guarantor



and Obligor hereunder with the same force and effect as if originally named as a Guarantor herein. The execution and delivery of any Guaranty Supplement (or any other supplement to any Loan Document delivered in connection therewith) adding an additional Guarantor as a party to this Agreement or any other applicable Loan Document shall not require the consent of any other party hereto. The rights and obligations of each party hereunder shall remain in full force and effect notwithstanding the addition of any new Guarantor hereunder.

Section 9.3. Maximum Liability of Obligors. It being understood that the intent of the Secured Parties is to obtain a guaranty from each Guarantor and each Borrower, and the intent of each Guarantor and each Borrower is to incur guaranty obligations, in an amount no greater than the largest amount that would not render such obligations subject to avoidance under Section 548 of the Bankruptcy Code or any applicable state law relating to fraudulent conveyances or fraudulent transfers, it is hereby agreed that:

(a) If (i) the sum of the guaranty obligations of the Guarantors and the Borrowers under Section 9.1 and, without duplication, in the case of each Borrower, the obligations arising from the joint and several liability of such Borrower with respect to Loans or other extensions of credit made under this Agreement to each other Borrower (collectively, the "Guarantor Obligations") exceeds (ii) the sum (the "Total Available Net Assets") of the Maximum Available Net Assets (as defined in Section 9.4) of each Guarantor and each Borrower, in the aggregate, then (without prejudice to the Obligations of each of the Borrowers under this Agreement with respect to Loans or other extensions of credit made under this Agreement to it) the Guarantor Obligations of each Guarantor and each Borrower shall be limited to the greater of (x) the Total Available Net Assets and (y) the value received by such Guarantor or such Borrower in connection with the incurrence of the Guarantor Obligations to the greatest extent such value can be determined; and

(b) if, but for the operation of this Section 9.3(b) and notwithstanding Section 9.3(a), the Guarantor Obligations of any Guarantor or any Borrower hereunder otherwise would be subject to avoidance under Section 548 of the Bankruptcy Code or any applicable state law relating to fraudulent conveyances or fraudulent transfers, taking into consideration such Guarantor's or such Borrower's (i) rights of contribution, reimbursement and indemnity from the Borrowers and the other Guarantors with respect to amounts paid by such Guarantor or such Borrower in respect of the Obligations (including pursuant to Section 9.4) (calculated so as to reasonably maximize the total amount of obligations able to be incurred hereunder), and (ii) rights of subrogation to the rights of the Secured Parties, then the Guarantor Obligations of such Guarantor or such Borrower shall be the largest amount, if any, that would not leave such Guarantor or such Borrower, after the incurrence of such obligations, insolvent or with unreasonably small capital within the meaning of Section 548 of the Bankruptcy Code or any applicable state law relating to fraudulent conveyances or fraudulent transfers, or otherwise make such obligations subject to such avoidance.

Any Person asserting that the Guarantor Obligations of such Guarantor or such Borrower are subject to Section 9.3(a) or are avoidable as referenced in Section 9.3(b) shall have the burden (including the burden of production and of persuasion) of proving (a) the extent to which such Guarantor Obligations, by operation of Section 9.3(a), are less than the Obligations of the Borrowers owed to the Secured Parties or (b) that, without giving effect to Section 9.3(b), such Guarantor's or such Borrower's Guarantor Obligations hereunder would be avoidable and the extent to which such Guarantor Obligations, by operation of Section 9.3(b), are less than such Obligations of the Borrowers, as the case may be.

Section 9.4. Contribution Rights, Etc. In order to provide for just and equitable contribution, indemnity and reimbursement among the Guarantors and any other Obligors, including the Borrowers, in

connection with the execution of this Guaranty, the Obligors have agreed among themselves that if any Obligor satisfies some or all of the Obligations (a "Funding Obligor"), the Funding Obligor shall be entitled to contribution, indemnity or reimbursement, as applicable, from the other Obligors that have positive Maximum Available Net Assets (as defined below) for all payments made by the Funding Obligor in satisfying the Obligations, so that each Obligor that remains obligated under this Guaranty or any other guaranty or otherwise for the Obligations at the time that a Funding Obligor makes such payment, without regard to the making of such payment (a "Remaining Obligor"), and that has a positive Maximum Available Net Assets, shall bear a portion of such payment equal to the percentage that such Remaining Obligor's Maximum Available Net Assets bears to the aggregate Maximum Available Net Assets of all Obligors that have positive Maximum Available Net Assets, provided that no Remaining Obligor's obligation to make such contribution, indemnity or reimbursement payments hereunder shall exceed an amount equal to the Maximum Available Net Assets of such Remaining Obligor.

As used herein, "Available Net Assets" means, with respect to any Obligor, the amount, as of the respective date of calculation, by which the sum of a Person's assets (including subrogation, indemnity, contribution, reimbursement and similar rights that the Obligor may have, but excluding any such rights in respect of the Guarantor Obligations), determined on the basis of a "fair valuation" or their "fair saleable value" (whichever is the applicable test under Section 548 and other relevant provisions of the Bankruptcy Code and the relevant state fraudulent conveyance or transfer laws), is greater than the amount that will be required to pay all of such Person's debts, in each case matured or unmatured, contingent or otherwise, as of the date of calculation, but excluding liabilities arising under this Guaranty or, in the case of each Borrower, the liabilities arising from the joint and several liability of such Borrower with respect to Loans or other extensions of credit made under this Agreement to each other Borrower and excluding, to the maximum extent permitted by Applicable Law with the objective of avoiding rendering such Person insolvent, liabilities subordinated to the Obligations arising out of loans or advances made to such Person by any other Person, and

"Maximum Available Net Assets" means, with respect to any Obligor, the greatest of the Available Net Assets of such Obligor calculated as of the following dates: (A) the date on which such Person becomes an Obligor, and (B) each date on which such Obligor expressly reaffirms this Guaranty.

Each Guarantor and Borrower shall be deemed to expressly reaffirm the guaranty provided for in this Article IX upon each borrowing of a Loan and automatically, without further action, upon each delivery by the Administrative Borrower of financial statements required pursuant to Section 5.1(a). The meaning of the terms "fair valuation" and "fair saleable value" and the calculation of assets and liabilities shall be determined and made in accordance with the relevant provisions of the Bankruptcy Code and applicable state fraudulent conveyance or transfer laws.

## **ARTICLE X**

### **MISCELLANEOUS**

Section 10.1. No Waiver; Cumulative Remedies. No failure or delay on the part of the Agent, any Lender or any other Secured Party in exercising any right, power or remedy under the Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any such right, power or remedy preclude any other or further exercise thereof or the exercise of any other right, power or remedy under the Loan Documents. The remedies provided in the Loan Documents are cumulative and not exclusive of any remedies provided by law.

Section 10.2. Amendments, Requested Waivers, Etc. No amendment, modification, termination or waiver of any provision of any Loan Document or consent to any departure by any Obligor therefrom shall be effective unless the same shall be in writing and signed by the Administrative Agent

and the Required Lenders; provided that no amendment, modification, termination, waiver or consent shall do any of the following unless the same shall be in writing and signed by the Administrative Agent and each Lender directly affected thereby:

- (a) increase the Commitments;
- (b) reduce the amount of any principal of or interest, premium or fees due on or in respect of the Loans other fees payable to the Lenders;
- (c) postpone any date fixed for any scheduled payment of principal of or interest, premium or fees due on or in respect any outstanding Loan or other fees payable to the Lenders hereunder (for the avoidance of doubt, mandatory prepayments pursuant to Section 2.9(a) may be postponed, delayed, waived or modified with the consent of the Required Lenders);
- (d) release any material Guaranty or the pledge of any Equity Interest in any Subsidiary under any Loan Document, other than a release of such Guaranty or pledge of such Equity Interest to permit divestiture of the relevant Subsidiary permitted by this Agreement or specifically approved by the Required Lenders;
- (e) other than as permitted by Section 8.18(a)(i), release Agent's Lien in all or substantially all of the Collateral;
- (f) change the definition of "Required Lenders"; or
- (g) amend this Section 10.2 or any other provision of this Agreement requiring the consent or other action of the Required Lenders or all Lenders.

Any waiver or consent given hereunder shall be effective only in the specific instance and for the specific purpose for which given. No notice to or demand on any Borrower in any case shall entitle any Borrower to any other or further notice or demand in similar or other circumstances.

If, in connection with any proposed amendment, waiver or consent requiring the consent of "each Lender directly affected thereby," the consent of the Required Lenders is obtained, but the consent of other necessary Lenders is not obtained (any such Lender whose consent is necessary but not obtained being referred to herein as a "Non-Consenting Lender"), then the Administrative Agent may elect to replace a Non-Consenting Lender as a Lender party to this Agreement, provided that, concurrently with such replacement, (i) another bank or other entity which is satisfactory to the Administrative Agent shall agree, as of such date, to purchase for cash the Term Loans and other Obligations due to the Non-Consenting Lender pursuant to an assignment and assumption and to become a Lender for all purposes under this Agreement and to assume all obligations of the Non-Consenting Lender to be terminated as of such date and to comply with the requirements of Section 8.12, unless waived by the Administrative Agent and the Administrative Borrower and (ii) the Administrative Borrower shall pay to such Non-Consenting Lender in same day funds on the day of such replacement (1) all interest, fees and other amounts then accrued but unpaid to such Non-Consenting Lender by the Borrowers hereunder to and including the date of termination, and (2) an amount, if any, equal to the payment (in excess of the face value of the principal amount) which would have been due to such Lender on the day of such replacement had the Loans of such Non-Consenting Lender been prepaid on such date rather than sold to the replacement Lender.

Section 10.3. Notices and Distributions.

(a) Except as otherwise expressly provided herein, all notices, requests, demands and other communications provided for under the Loan Documents shall be in writing and delivered to the applicable parties at their respective addresses set forth on Schedule 10.3, or, as to each party, at such other address as shall be designated by such party in a written notice to the other party complying as to delivery with the terms of this Section 10.3. All such notices, requests, demands and other communications, shall be effective upon actual delivery if hand delivered, or shall be effective when sent by nationally recognized overnight mail courier or delivery service, or if sent by email or PDF, when sent, in each case addressed as aforesaid, except that notices or requests to the Agent, any Lender, or any other Secured Party pursuant to any of the provisions of Article II shall not be effective until received by the Agent, such Lender, or such other Secured Party.

(b) Each Obligor agrees that the Administrative Agent may (but shall not be required to) make any materials delivered by such Obligor to the Administrative Agent, as well as, but not limited to, any amendments, waivers, consents, and other written information, documents, instruments and other materials relating to any Group Member, or any other materials or matters relating to this Agreement, the other Loan Documents, the ABL DIP Credit Documents, the Related Transactions or any of the transactions contemplated hereby or thereby (collectively, the “Communications”) available to the Secured Parties by posting such notices on an electronic delivery system (which may be provided by the Administrative Agent, an Affiliate, or any Person that is not an Affiliate of the Administrative Agent), such as IntraLinks®, or a substantially similar electronic system that requires passwords for access and takes other customary measures with respect to confidentiality and security (the “Platform”) all of which shall be at the cost and expense of the Obligors. Each of Holdings and each Obligor acknowledges that (i) the distribution of material through an electronic medium is not necessarily secure and that there are confidentiality and other risks associated with such distribution, (ii) the Platform is provided “as is” and “as available” and (iii) neither the Administrative Agent nor any of its Affiliates represents or warrants the accuracy, completeness, timeliness, sufficiency or sequencing of the Communications posted on the Platform. The Administrative Agent and its Affiliates expressly disclaim with respect to the Platform any liability for errors in transmission, incorrect or incomplete downloading, delays in posting or delivery, or problems accessing the Communications posted on the Platform and any liability for any losses, costs, expenses or liabilities that may be suffered or incurred in connection with the Platform. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third party rights or freedom from viruses or other code defects, is made by the Administrative Agent or any of its Affiliates in connection with the Platform.

(c) Each Secured Party party hereto agrees that notice to it (as provided in the next sentence) (a “Notification”) specifying that any Communication has been posted to the Platform shall for purposes of this Agreement constitute effective delivery to such Secured Party, as applicable, of such information, documents or other materials comprising such Communication. Each Secured Party party hereto agrees (i) to notify, on or before the date such Secured Party becomes a party to this Agreement, the Administrative Agent in writing of such Secured Party’s e-mail address to which a Notification may be sent (and from time to time thereafter to ensure that the Administrative Agent has on record an effective e-mail address for such Secured Party) and (ii) that any Notification may be sent to such e-mail address.

Section 10.4. Agent Expenses. Any action taken by any Obligor under or with respect to any Loan Document, even if required under any Loan Document or at the request of any Secured Party, shall

be at the expense of such Obligor, and no Secured Party shall be required under any Loan Document to reimburse any Group Member therefor except as expressly provided therein. The Borrowers will reimburse the Agent for all Agent Expenses, such reimbursement to be made (a) on the Closing Date, in the case of all Agent Expenses incurred on or prior to the Closing Date (unless waived by the Agent), and (b) promptly following request for reimbursement, in the case of other Agent Expenses. The obligations of the Obligors under this Section 10.4 shall survive termination of this Agreement and the discharge of the Obligations.

Section 10.5. Costs and Expenses; Indemnification. In addition to the payment of Agent Expenses pursuant to Section 10.4, each Borrower agrees to indemnify, defend and hold harmless the Agent, each Lender, each other Secured Party and each of their respective participants, parent corporations, subsidiary corporations, affiliated corporations, successor corporations, and all present and future officers, directors, employees, attorneys and agents (the "Indemnitees"), from and against (i) any Environmental Liability, or any other Liability to which any Indemnitee may be subjected as a result of any past, present or future existence, use, handling, storage, transportation or disposal of any Hazardous Substance by any Group Member or with respect to any property owned, leased or controlled by any Group Member, (ii) any and all transfer taxes, documentary taxes, recording taxes, assessments or charges made by any Governmental Authority (excluding income or gross receipts taxes) by reason of the execution and delivery of this Agreement and the other Loan Documents, the recording or filing of any Mortgage or other Loan Document, the Agent's Lien in any Collateral, or the making of any Loans, and (iii) any and all Liabilities of any kind or nature whatsoever (including, without limitation, the reasonable fees and disbursements of counsel) in connection with any investigative, administrative or judicial proceedings, whether or not such Indemnitee shall be designated a party thereto, or with any other matter, in each case which may be imposed on, incurred by or asserted against such Indemnitee, in any manner relating to or arising out of or in connection with, (w) the Commitments, the making or maintaining of any Loans, the entering into of this Agreement or any other Loan Documents, any Obligation (or the repayment thereof), the Agent's Lien in any Collateral, or the use or intended use of the proceeds of the Loans, or any securities filing of, or with respect to, any Group Member, (x) any commitment letter, proposal letter or term sheet with any Person or any contractual obligation, arrangement or understanding with any broker, finder or consultant, in each case entered into by or on behalf of any Group Member or any Affiliate of any of them in connection with any of the foregoing and any contractual obligation entered into in connection with any Platform, (y) any actual or prospective investigation, litigation or other proceeding, whether or not brought by any such Indemnitee or any of its Related Persons, any holders of its securities or its creditors (and including attorneys' fees in any case), whether or not any such Indemnitee, Related Person, holder or creditor is a party thereto, and whether or not based on any securities or commercial law or regulation or any other Requirement of Law or theory thereof, including common law, equity, contract, tort or otherwise, or (z) any other act, event or transaction related, contemplated in or attendant to any of the foregoing. If any investigative, judicial or administrative proceeding arising from any of the foregoing is brought against any Indemnitee, upon request of such Indemnitee, the Administrative Borrower, or counsel designated by the Administrative Borrower and satisfactory to the Indemnitee, will resist and defend such action, suit or proceeding to the extent and in the manner directed by the Indemnitee, at the Borrowers' sole cost and expense. Each Indemnitee will use its commercially reasonable efforts to cooperate in the defense of any such action, suit or proceeding. If the foregoing undertaking to indemnify, defend and hold harmless may be held to be unenforceable because it violates any law or public policy, the Borrowers shall nevertheless make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities contemplated hereby which is permissible under Applicable Law. Each of the Group Members hereby releases, acquits, and forever discharges the Agent, each of the Lenders, and each other Secured Party, and each of and every past and present affiliates, officers, directors, agents, servants, employees, representatives and attorneys of the Agent, the Lenders and the other Secured Parties, from any and all claims, causes of action, suits, debts, liens, obligations, liabilities, demands, losses, costs and expenses (including attorneys' fees) of any

kind, character, or nature whatsoever, known or unknown, fixed or contingent, which any Group Member may have or claim to have now or which may hereafter arise out of or connected with any act of commission or omission of the Indemnitees (except, as to each Indemnitee, to the extent arising solely out of the gross negligence, fraud or willful misconduct of such Indemnitee as finally determined by a non-appealable judgment of a court of competent jurisdiction) including, without limitation, any claims, liabilities or obligations arising with respect to the this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby. The provisions of this Section 10.5 shall be binding upon each of the Group Members and shall inure to the benefit of the Agent, the Lenders and the other Secured Parties and each of the past and present affiliates, officers, directors, agents, servants, employees, representatives and attorneys of the Agent, the Lenders and the other Secured Parties. The obligations of the Obligors under this Section 10.5 shall survive termination of this Agreement and the discharge of the Obligations.

Section 10.6. Execution in Counterparts. This Agreement and other Loan Documents may be executed in any number of counterparts, each of which when so executed and delivered (including by PDF or facsimile transmission, which shall be as effective as delivery of a manually executed counterpart hereof) shall be deemed to be an original and all of which counterparts, taken together, shall constitute but one and the same instrument.

Section 10.7. Governing Law; Jurisdiction; Waiver of Jury Trial; Waiver of Special, Direct, or Consequential Damages.

(a) Governing Law. The Loan Documents shall be governed by, and construed in accordance with, the laws of the State of New York (without giving effect to any conflict of law principles), except to the extent the law of any other jurisdiction applies as to the perfection or enforcement of the any security interest in any Collateral (to the extent collateral security is granted with respect to the Obligations) and except to the extent expressly provided to the contrary in any Loan Document.

(b) Jurisdiction. The Obligors, the Agent and the Lenders hereby irrevocably submit to the exclusive jurisdiction and venue of the Bankruptcy Court and any state or federal court of the United States sitting in the State of New York, and any appellate court thereof, in any action or proceeding arising out of or relating to this Agreement or any of the other Loan Documents, and the Obligors, the Agent and the Lenders hereby irrevocably agree that all claims in respect of such action or proceeding may be heard and determined in such state or federal court. The Obligors, the Agent and the Lenders hereby irrevocably waive, to the fullest extent they may effectively do so, the defense of an inconvenient forum to the maintenance of such action or proceeding. Each Obligor agrees that a final judgment in any such action or proceeding may be enforced in other jurisdictions by suit on the judgment or in any other manner provided by law. Nothing in this Section 10.7(b) shall affect the right of the Agent or any Lender to serve legal process in any other manner permitted by law or affect the right of the Agent or any Lender to bring any action or proceeding against any Group Member or the property of any Group Member (including the Collateral) in the courts of other jurisdictions.

(c) WAIVER OF JURY TRIAL. THE OBLIGORS, THE LENDERS AND THE AGENT HEREBY IRREVOCABLY WAIVE ALL RIGHT TO TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO ANY LOAN DOCUMENT OR ANY INSTRUMENT OR DOCUMENT DELIVERED THEREUNDER.

(d) Special, Indirect or Consequential Damages. In no event shall any Indemnitee be liable on any theory of liability for any special, indirect, consequential or punitive damages (including

any loss of profits, business or anticipated savings), unless resulting solely and directly from the gross negligence, fraud or willful misconduct of such Indemnitee as determined pursuant to a final, non-appealable order of a court of competent jurisdiction. Each Obligor hereby waives, releases and agrees (and shall cause each other Group Member to waive, release and agree) not to sue upon any such claim for any special, indirect, consequential or punitive damages, whether or not accrued and whether or not known or suspected to exist in its favor.

Section 10.8. Integration; Inconsistency. This Agreement, together with the Loan Documents, comprise the final and complete integration of all prior expressions by the parties hereto with respect to the subject matter hereof and shall constitute the entire agreement among the parties hereto with respect to such subject matter, superseding all prior oral or written understandings. If any provision of a Loan Document (other than the Intercreditor Agreement) is inconsistent with or conflicts with a comparable or similar provision appearing in this Agreement, the comparable or similar provision in this Agreement shall govern.

Section 10.9. Agreement Effectiveness. This Agreement shall become effective upon delivery of fully executed counterparts hereof to each of the parties hereto.

Section 10.10. Advice from Independent Counsel. The parties hereto understand that this Agreement is a legally binding agreement that may affect such party's rights. Each party hereto represents to the other that it has received legal advice from counsel of its choice regarding the meaning and legal significance of this Agreement and that it is satisfied with its legal counsel and the advice received from it.

Section 10.11. Binding Effect; No Assignment by Borrower; Third Party Beneficiary. This Agreement shall be binding upon and inure to the benefit of the Obligors, the Lenders, the Agent and their respective successors and assigns; provided, however, no Obligor may assign any or all of its rights or obligations hereunder or any of its interest herein without the prior written consent of the Administrative Agent and all Lenders.

Section 10.12. Confidentiality. (a) The Agent and each Lender shall hold all non-public information regarding the Group Members and their businesses obtained by the Agent or such Lender pursuant to the requirements hereof in accordance with the Agent's or such Lender's customary procedures for handling confidential information of such nature, it being understood and agreed by each Group Member that, in any event, the Agent and each Lender may make (i) on a confidential basis, disclosures of such information to Affiliates of such Lender or the Agent and to their respective agents and advisors (and to other Persons authorized by a Lender or the Agent to organize, present or disseminate such information in connection with disclosures otherwise made in accordance with this Section 10.12), (ii) disclosures of such information reasonably required by any bona fide or potential assignee, transferee or participant in connection with the contemplated assignment, transfer or participation of or in any Term Loans or by any direct or indirect contractual counterparties (or the professional advisors thereto) to any swap or derivative transaction relating to any Group Member and its obligations (provided, such assignees, transferees, participants, counterparties and advisors are advised of and agree to be bound by either the provisions of this Section 10.12 or other provisions at least as restrictive as this Section 10.12), (iii) disclosure to any rating agency when required by it, provided that, prior to any disclosure, such rating agency shall undertake in writing to preserve the confidentiality of any confidential information relating to the Group Members received by it from the Agent or any Lender, (iv) disclosures 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, and (v) disclosures required or requested by any Governmental Authority or representative thereof or pursuant to legal or judicial process; provided, unless

specifically prohibited by Applicable Law or court order, each Lender and the Agent shall make reasonable efforts to notify the Administrative Borrower of any request by any Governmental Authority or representative thereof (other than any such request in connection with any examination of the financial condition or other routine examination of such lender by such Governmental Authority) for disclosure of any such non-public information prior to disclosure of such information. In addition, notwithstanding the above, Bayside (or any successor thereto as Agent) and its Affiliates (but, subject to the foregoing, not any other Lenders or their Affiliates) may disclose the existence of the Loan Documents and the information about the Loan Documents to any Person.

(b) Each Group Member shall, and shall cause its Affiliates to, not disclose any of the terms and conditions or other provisions of the Administrative Agent Fee Agreement to any Person, and shall keep all such terms and conditions confidential, provided that notwithstanding the foregoing, any Group Member make disclosures of such information (i) to its accountants, legal counsel and other advisors provided that such Persons are informed of the confidentiality of such information and agree to keep such information confidential at least to the same extent as is required hereby, or (ii) as required or requested by any Governmental Authority or representative thereof or pursuant to legal or judicial process or as required by Applicable Law; provided that, unless specifically prohibited by Applicable Law, each Group Member shall make reasonable efforts to notify the Administrative Agent of any request by any Governmental Authority or representative thereof for disclosure of any such confidential information, and shall in any event, unless specifically prohibited by Applicable Law, notify the Administrative Agent of each public disclosure of any such information by a Group Member or any Affiliate thereof, together with the proposed text of such public disclosure, prior to disclosure of such information, and provide the Administrative Agent an opportunity to comment thereon, and will not in any such disclosure disclose more information than is mandatorily required to be disclosed under Applicable Law.

Section 10.13. Severability of Provisions. Any provision of this Agreement which is prohibited or unenforceable shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof.

Section 10.14. Senior Debt. The Obligations are intended to be senior Debt, and not subordinated to any other senior Debt, or made *pari passu* with Debt that is subordinated to any other Debt, of any Obligor. The Obligations are deemed to be expressly designated and named as "Designated Senior Debt," "Designated Senior Indebtedness," "Senior Indebtedness" or similar terms for purposes of any present or future loan agreement, indenture, note issuance or purchase agreement or other document under which such a designation is applicable or available for senior Debt of any Obligor (including without limitation the 2011 Convertible Subordinated Debenture Indenture).

Section 10.15. Release of Carson-Dellosa Equity. Upon the consummation of a Carson-Dellosa Drag-Along Sale, the Collateral Agent shall release the Liens, securing the Obligations, on the Equity Interests in Carson-Dellosa Publishing, LLC that are Disposed of in such transaction, provided that (and only if) (x) all of the conditions set forth in Section 8.18(a)(ii) (including the requisite certification by the Administrative Borrower) have been satisfied with respect to such release, (y) the Liens on all of such Equity Interests securing the ABL DIP Credit Obligations are concurrently being released, and (z) 100% of the Net Cash Proceeds of such Carson-Dellosa Drag-Along Sale are immediately applied to prepay the Obligations in accordance with Section 2.9(a)(i).

Section 10.16. USA Patriot Act. Each Lender hereby notifies the Administrative Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub. L. 107-56 (signed into law October 26, 2001)) (the "USA Patriot Act"), it is required to obtain, verify and record information that identifies



each Borrower, which information includes the name and address of such Borrower and other information that will allow such Lender to identify such Borrower in accordance with the USA Patriot Act.

Section 10.17. Administrative Borrower as Agent for Borrower. Each Borrower hereby irrevocably appoints Administrative Borrower as the borrowing agent and attorney-in-fact for all Borrowers. Each Borrower hereby irrevocably appoints and authorizes Administrative Borrower (i) to provide Agent with all notices with respect to Loans obtained for the benefit of any Borrower and all other notices and instructions under this Agreement and (ii) to take such action as Administrative Borrower deems appropriate on its behalf to obtain Loans and to exercise such other powers as are reasonably incidental thereto to carry out the purposes of this Agreement. Each Borrower hereby jointly and severally agrees to indemnify each Indemnitee and hold each Indemnitee harmless against any and all liability, expense, loss or claim of damage or injury, made against the Indemnitees by any Obligor or by any third party whosoever, arising from or incurred by reason of (a) the handling of the Collateral as herein provided, (b) the Indemnitees' relying on any instructions of Administrative Borrower, or (c) any other action taken by the Indemnitees hereunder or under the other Loan Documents, except that Borrowers will have no liability to the relevant Indemnitee under this Section 10.17 with respect to any liability that has been finally determined by a court of competent jurisdiction to have resulted solely from the gross negligence, fraud or willful misconduct of such Indemnitee.

Section 10.18. Intercreditor Agreement. Agent and each Lender hereunder, by its acceptance of the benefits provided hereunder, (a) consents to the subordination of liens provided for in the Intercreditor Agreement, (b) agrees that it will be bound by, and will take no actions contrary to, the provisions of the Intercreditor Agreement, and (c) authorizes and instructs the Agent to enter into the Intercreditor Agreement as Agent on behalf of each Lender. Agent and each Lender hereby agrees that the terms, conditions and provisions contained in this Agreement are subject to the Intercreditor Agreement and, in the event of a conflict between the terms of the Intercreditor Agreement and this Agreement or any of the Loan Documents, the terms of the Intercreditor Agreement shall govern and control.

Section 10.19. Conflict. In the event of a conflict between this Agreement and the Final Order, the Final Order shall govern.

[Signature Page Follows]

Schedule 5.18

Milestones

<u>Milestone</u>	<u>Deadline</u>
1. Sellers and Purchaser shall have entered into the Asset Purchase Agreement, which shall be in form and substance acceptable to Agent.	Petition Date
2. Sellers shall have filed the Chapter 11 Cases in the Bankruptcy Court.	Petition Date
3. Sellers shall have filed the Sale Motion seeking the Bankruptcy Court's approval of the Bidding Procedures Order and the Sale Order and appropriate supporting declarations, in each case, in form and substance acceptable to Agent	Petition Date
4. The Bankruptcy Court shall have (i) held a hearing to consider approval of the proposed Bidding Procedures Order and (ii) entered the Bidding Procedures Order.	February 8, 2013
5. Deadline to submit Qualified Bids (the " <u>Bid Deadline</u> ").	March 19, 2013
6. Deadline for Sellers to commence the Auction if any other Qualified Bid is submitted prior to the Bid Deadline (the " <u>Auction Deadline</u> ").	March 25, 2013
7. The Bankruptcy Court shall have entered the Sale Order, which shall be in form and substance acceptable to Agent.	March 27, 2013
8. The APA Closing Date shall have occurred.	April 11, 2013

IN WITNESS WHEREOF, the parties hereto have caused this Agreement to be executed by their respective officers thereunto duly authorized, as of the date first above written.

SCHOOL SPECIALTY, INC.,

CLASSROOMDIRECT.COM, LLC,

DELTA EDUCATION, LLC,

SPORTIME, LLC,


CHILDCRAFT EDUCATION CORP.,

BIRD-IN-HAND WOODWORKS, INC.,

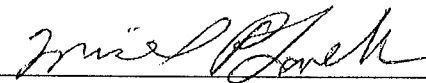
CALIFONE INTERNATIONAL, INC.,

PREMIER AGENDAS, INC.,

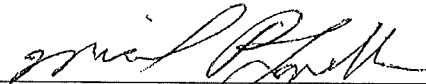
as Borrowers

By:   
Name:  
Title:

SELECT AGENDAS, INC.,

By:   
Name:  
Title:

FREY SCIENTIFIC, INC.,

By:   
Name:  
Title:

SAX ARTS & CRAFTS, INC.,

By:   
Name:  
Title:

BAYSIDE FINANCE, LLC, as  
Administrative Agent

By: 

Name: **Richard Siegel**

Title: **Authorized Signatory**

BAYSIDE FINANCE, LLC, as  
Collateral Agent

By: 

Name: **Richard Siegel**

Title: **Authorized Signatory**

BAYSIDE FINANCE, LLC, as a Lender

By: 

Name: **Richard Siegel**

Title: **Authorized Signatory**

**EXHIBIT A**

**Proposed Interim Order**



Rules”) and the Local Bankruptcy Rules (the “Local Rules”) of the United States Bankruptcy Court for the District of Delaware (the “Bankruptcy Court”), seeking, among other things:

(a) authorization for each Borrower to obtain postpetition financing and to guaranty the obligations of each other Borrower in connection with the DIP Financing (as defined below), and for each of the other Debtors and certain of their non-debtor affiliates (the “Guarantors”) to guaranty the Borrowers’ obligations in connection with the DIP Financing, consisting of:

(i) a super-priority credit facility made available to the Borrowers in an aggregate principal amount of up to \$144,665,931.42 (the “Bayside DIP Facility”) consisting of (A) a credit facility in the amount of \$50,000,000 in respect of new money funding (the “Incremental DIP Term Facility”); and (B) upon entry of the Final Order (as defined below), a roll up of \$94,665,931.42 in respect of the Prepetition Term Loan Debt (as defined below) (the “Bayside Roll Up DIP Loans”), subject to the terms and conditions hereof, with Bayside Finance, LLC (“Bayside” and, in its capacity as agent under the Bayside DIP Facility, the “Bayside DIP Agent”), for itself and one or more funds managed and/or advised by Bayside and its designees (the “Bayside DIP Lenders”); and

(ii) a super-priority revolving credit facility made available to the Borrowers in an aggregate principal amount of up to \$175,000,000 (the “ABL DIP Facility” and, together with the Bayside DIP Facility, the “DIP Financing”), with Wells Fargo Capital Finance, LLC (“Wells Fargo”) or an affiliate acting as administrative agent (in such capacity, the “ABL DIP Agent” and, together with the Bayside DIP Agent, the “DIP Agents”) for itself and a syndicate of financial

institutions (collectively, the “ABL DIP Lenders” and, together with the Bayside DIP Lenders, the “DIP Lenders”);

(b) authorization for the Debtors to execute and deliver final documentation consistent with the terms of, (i) with respect to the Bayside DIP Facility, the form of credit agreement attached to the Motion as Exhibit B (as amended, supplemented or modified from time to time, the “Bayside DIP Credit Agreement”) and, (ii) with respect to the ABL DIP Facility, the form of credit agreement attached to the Motion as Exhibit C (as amended, supplemented or modified from time to time, the “ABL DIP Credit Agreement” and, together with the Bayside DIP Credit Agreement, the “DIP Credit Agreements”), each of which shall be in form and substance acceptable to the Bayside DIP Agent and the ABL DIP Agent, and filed with the Bankruptcy Court contemporaneously with the filing of the Motion, and to perform such other and further acts as may be required in connection with the DIP Credit Agreements and all such instruments or documents as may be executed and delivered in connection therewith or which relate thereto (collectively with the DIP Credit Agreements, the “DIP Documents”);

(c) authorization for the Debtors to: (i) use all cash collateral consisting of proceeds of ABL Priority Collateral (as defined in the DIP Intercreditor Agreement) coming into the possession or control of the Debtors to reduce the Obligations (as defined in the Credit Agreement dated as of May 22, 2012 (as amended, supplemented or otherwise modified from time to time, the “Prepetition ABL Credit Agreement”) among certain of the Debtors, Wells Fargo, as administrative agent and co-collateral agent (in such capacities, the “Prepetition ABL Agent”), and the lenders and other entities party thereto (collectively, the “Prepetition ABL Lenders”)) to the extent not repaid or otherwise satisfied with proceeds of the ABL DIP Credit Agreement and, to the extent allowable under Bankruptcy Code section 506(b), pay (A) interest



at the default rate set forth in the Prepetition ABL Credit Agreement, (B) all fees, costs, expenses and other charges due or coming due under the Prepetition ABL Documents or in connection with the Prepetition ABL Debt (each as defined below), regardless of whether such fees, costs, interest and other charges are included in the budget set forth in the Prepetition ABL Documents, and (C) all costs and expenses at any time incurred by the Prepetition ABL Agent and Prepetition ABL Lenders in connection with (x) the negotiation, preparation and submission of this Interim Order (as defined below) and any other order or document related hereto and (y) the representation of the Prepetition ABL Agent and the Prepetition ABL Lenders in the Chapter 11 Cases, including in defending against any Lender Claim (as defined below) (such amounts set forth in subclauses (A) through (C), collectively, the “Allowable ABL 506(b) Amounts” and, together with the Obligations (as defined in the Prepetition ABL Credit Agreement), the “Prepetition ABL Debt”) arising under or in connection with the Prepetition ABL Credit Agreement and the Loan Documents (as defined in the Prepetition ABL Credit Agreement) executed in connection therewith (collectively with the Prepetition ABL Credit Agreement, the “Prepetition ABL Documents”); (ii) upon entry of this Interim Order, use the proceeds of the ABL DIP Facility to fully repay or otherwise satisfy the Prepetition ABL Debt; and (iii) deem any extant letters of credit and Bank Product Obligations (as defined in the Prepetition ABL Credit Agreement) to be issued or otherwise incurred under the ABL DIP Credit Agreement (such Prepetition ABL Debt, letter of credit obligations and Bank Product Obligations, collectively, the “ABL Roll Up Obligations”);

(d) the granting of adequate protection to the secured parties under the Prepetition ABL Credit Agreement and the Credit Agreement dated as of May 22, 2012 (as amended, restated, supplemented or otherwise modified from time to time, the “Prepetition Term Loan”

Credit Agreement” and, together with the Prepetition ABL Credit Agreement, the “Prepetition Credit Agreements”) among School Specialty, the borrowers and guarantors party thereto, the lenders party thereto (collectively, the “Prepetition Term Loan Lenders” and, together with the Prepetition ABL Lenders, the “Prepetition Secured Lenders”) and Bayside, as administrative agent (in such capacity, the “Prepetition Term Loan Agent” and, together with the Prepetition ABL Agent, the “Prepetition Agents”), and each loan document executed in connection with the Prepetition Term Loan Credit Agreement (collectively with the Prepetition Term Loan Credit Agreement, the “Prepetition Term Loan Documents” and, together with the Prepetition ABL Documents, the “Prepetition Loan Documents”), whose liens and security interests are being primed by the DIP Financing;

(e) authorization for the Debtors to use any Cash Collateral (as defined below) in which the Prepetition ABL Agent, any Prepetition ABL Lender, the Prepetition Term Loan Agent or any Prepetition Term Loan Lender (collectively, the “Prepetition Secured Parties”) may have an interest and the granting of adequate protection to the Prepetition Secured Parties with respect to, *inter alia*, such use of their Cash Collateral and all use and diminution in the value of their respective interests in collateral;

(f) pursuant to Bankruptcy Rule 4001, that an interim hearing (the “Interim Hearing”) on the Motion be held before this Court to consider entry of the proposed interim order annexed to the Motion (the “Interim Order”), among other things, (i) authorizing each Borrower, on an interim basis, to borrow forthwith from the DIP Lenders under the DIP Documents up to an aggregate principal or face amount not to exceed (A) \$175,000,000 pursuant to the ABL DIP Facility and (B) \$25,000,000 under the Incremental DIP Term Facility (in each case, subject to any limitations on borrowings under the applicable DIP Documents and in

accordance with the applicable budget), (ii) authorizing each Borrower to guaranty the DIP Obligations (as defined below) of each other Borrower and the Guarantors to guaranty the DIP Obligations of each Borrower, (iii) authorizing the Debtors' use of Cash Collateral, and (iv) granting the adequate protection described herein; and

(g) that this Court schedule a final hearing (the "Final Hearing") to be held within thirty (30) days of the entry of the Interim Order to consider entry of a final order (the "Final Order") authorizing the balance of the DIP Financing (including the Bayside Roll Up DIP Loans) under the DIP Documents on a final basis, as set forth in the Motion and the DIP Documents filed with this Court.

Due and appropriate notice of the Motion, the relief requested therein and the Interim Hearing having been served by the Debtors on the forty (40) largest unsecured creditors of the Debtors, the DIP Agents, the DIP Lenders, the Prepetition Agents, the Prepetition Secured Lenders, the Office of the United States Trustee for the District of Delaware (the "U.S. Trustee"), the Internal Revenue Service and the Securities and Exchange Commission in compliance with Bankruptcy Rule 4001(b) and (c) and the Local Rules; the Interim Hearing having been held by this Court on [January ], 2013; and upon the record made by the Debtors at the Interim Hearing and after due deliberation and consideration and sufficient cause appearing therefor;

**IT IS FOUND, DETERMINED, ORDERED AND ADJUDGED, that:**

1. ***Disposition.*** The Motion is granted on an interim basis in accordance with the terms of this Interim Order. Any objections to the Motion with respect to the entry of this Interim Order that have not been withdrawn, waived or settled, and all reservations of rights included therein, are hereby denied and overruled. This Interim Order shall become effective immediately upon entry. The DIP Intercreditor Agreement (as defined below) and that certain

Intercreditor Agreement dated as of May 22, 2012 (as amended, supplemented or modified from time to time, the “Prepetition Intercreditor Agreement” and, together with the DIP Intercreditor Agreement, the “Intercreditor Agreements”) in all respects are “subordination agreements” for purposes of Bankruptcy Code section 510(a).

2. ***Jurisdiction.*** This Court has core jurisdiction over the Chapter 11 Cases, the Motion and the parties and property affected hereby pursuant to 28 U.S.C. §§ 157(b) and 1334. Venue is proper before this Court pursuant to 28 U.S.C. §§ 1408 and 1409. The predicates for the relief sought herein are Bankruptcy Code sections 105, 361, 362, 363 and 364, Bankruptcy Rules 2002, 4001 and 9014 and the Local Rules.

3. ***Notice.*** Under the circumstances, the notice given by the Debtors of the Motion, the relief requested therein and the Interim Hearing constitutes appropriate, due and sufficient notice thereof and complies with Bankruptcy Rule 4001(b) and (c) and the Local Rules, and no further notice of the relief sought at the Interim Hearing is necessary or required.

4. ***Debtors’ Stipulations.*** Without prejudice to the rights of any other party (but which are subject to the limitations thereon contained in paragraph 21), the Debtors admit, stipulate and agree that:

(a) As of the date of the commencement of the Chapter 11 Cases (the “Petition Date”):

(i) the Debtors party to or otherwise obligated under the Prepetition Term Loan Documents, without defense, counterclaim or offset of any kind, were jointly and severally indebted and liable to the Prepetition Term Loan Lenders under the Prepetition Term Loan Documents in the aggregate principal amount of \$92,054,001.06 (including the Early Payment Fee, as defined in the

Prepetition Term Loan Credit Agreement) plus \$2,606,866.33 in accrued and unpaid interest, plus expenses (including any attorneys', accountants', appraisers' and financial advisors' fees that are chargeable or reimbursable under the Prepetition Term Loan Documents), charges, Obligations (as defined in the Prepetition Term Loan Credit Agreement) and all other obligations incurred in connection therewith as provided in the Prepetition Term Loan Documents (collectively, the "Prepetition Term Loan Debt") and, together with the ABL Roll Up Obligations, the "Prepetition Debt"), which Prepetition Term Loan Debt is secured by (collectively, the "Prepetition Term Loan Security Interests"): (X) first priority liens on and security interests in the Term Loan Priority Collateral (as defined in that certain Intercreditor Agreement dated as of January [28], 2013 by and between the ABL DIP Agent and the Bayside DIP Agent (the "DIP Intercreditor Agreement")); and (Y) second priority liens on and security interests in the ABL Priority Collateral (as defined in the DIP Intercreditor Agreement); and

(ii) the Debtors party to or otherwise obligated under the Prepetition ABL Documents, without defense, counterclaim or offset of any kind, were jointly and severally indebted and liable to the Prepetition ABL Lenders in the aggregate principal amount of approximately \$47.62 million in respect of loans and Letters of Credit (as defined in the Prepetition ABL Credit Agreement) made by the Prepetition ABL Lenders plus the Allowable ABL 506(b) Amounts and all other Obligations (as defined in the Prepetition ABL Credit Agreement), secured by (X) first priority liens on and security interests in the ABL Priority

Collateral (together with the Term Loan Priority Collateral, the “Prepetition Priority Collateral”) and (Y) second priority liens on and security interests in the Term Loan Priority Collateral (collectively, the “Prepetition ABL Security Interests” and, together with the Prepetition Term Loan Security Interests, the “Prepetition Security Interests”); and

(b) The Prepetition Debt constitutes the legal, valid and binding obligation of the respective Debtors named in the Prepetition Loan Documents, enforceable in accordance with its terms (other than in respect of the stay of enforcement arising from Bankruptcy Code section 362).

(c) No portion of the Prepetition Debt or any payments made to the Prepetition Agents or the Prepetition Secured Lenders or applied to the obligations owing under the Prepetition Loan Documents prior to the Petition Date is subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law.

(d) The Debtors hold no valid or enforceable “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights of any kind against any of the Prepetition Agents or the Prepetition Secured Lenders. Each Debtor hereby forever waives and releases any and all “claims” (as defined in the Bankruptcy Code), counterclaims, causes of action, defenses or setoff rights against each of the Prepetition Agents and each of the Prepetition Secured Lenders, whether arising at law or in equity, including any recharacterization, subordination, avoidance or other claim arising under or pursuant to section 105 or chapter 5 of the Bankruptcy Code or under any other similar provisions of applicable state or federal law; *provided, however*, that nothing herein or in any of the DIP Documents shall operate as a release

or waiver of any claims or causes of action held by any party (including, without limitation, any of the Debtors) against any Debtor, any "affiliate" of any Debtor (as defined in the Bankruptcy Code) or any officer, director or direct or indirect shareholder (or affiliate thereof) of any Debtor.

(e) The Prepetition Security Interests granted to the Prepetition Agents in the Prepetition Priority Collateral pursuant to and in connection with the Prepetition Loan Documents, including, without limitation, all security agreements, pledge agreements, mortgages, deeds of trust and other security documents executed by any of the Debtors in favor of the Prepetition Agents, for such Prepetition Agents' benefit and for the benefit of the applicable Prepetition Secured Lenders, (i) are valid, binding, perfected and enforceable liens and security interests in the real and personal property described in the Prepetition Loan Documents, (ii) are not subject, pursuant to the Bankruptcy Code or other applicable law, to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaim, defense or "claim" (as defined in the Bankruptcy Code) of any kind, (iii) are subject and subordinate only to (A) the DIP Liens (as defined below), (B) the Carve-Out (as defined below) to which the DIP Liens are subject and (C) valid, perfected and unavoidable liens and security interests permitted under the applicable Prepetition Loan Documents, but only to the extent that such liens and security interests are permitted by the applicable Prepetition Loan Documents to be senior to or *pari passu* with the applicable Prepetition Security Interests, and (iv) constitute the legal, valid and binding obligation of the Debtors, enforceable in accordance with the terms of the applicable Prepetition Loan Documents.

5. ***Findings Regarding the DIP Financing.***

(a) Good cause has been shown for the entry of this Interim Order.

(b) The Debtors have an immediate need to obtain the DIP Financing and use Cash Collateral to permit, among other things, the orderly continuation of the operation of their businesses, to maintain business relationships with vendors, suppliers and customers, to make payroll, to make capital expenditures and to satisfy other working capital and operational needs. The access of the Debtors to sufficient working capital and liquidity through the use of Cash Collateral, incurrence of new indebtedness for borrowed money and other financial accommodations is vital to the preservation and maintenance of the going concern values of the Debtors and to a successful reorganization of the Debtors.

(c) The Debtors are unable to obtain financing on more favorable terms from sources other than the DIP Lenders under the DIP Documents and are unable to obtain adequate unsecured credit allowable under Bankruptcy Code section 503(b)(1) as an administrative expense. The Debtors are also unable to obtain secured credit allowable under Bankruptcy Code sections 364(c)(1), 364(c)(2) and 364(c)(3) for the purposes set forth in the DIP Credit Agreements without the Debtors (i) granting to the DIP Agents and the DIP Lenders, subject to the Carve-Out as provided for herein, the DIP Liens and the Superpriority Claims (as defined below) under the terms and conditions set forth in this Interim Order and in the DIP Documents, (ii) upon entry of the Final Order, allowing the Bayside DIP Lenders to provide Bayside Roll Up DIP Loans in exchange for such Bayside DIP Lenders' Prepetition Term Loan Debt and (iii) upon entry of this Interim Order, using proceeds of the ABL DIP Facility to pay or otherwise satisfy the ABL Roll Up Obligations.

(d) The terms of the DIP Financing, including the Bayside Roll Up DIP Loans and the ABL Roll Up Obligations, and the use of Cash Collateral are fair and reasonable, reflect the



Debtors' exercise of prudent business judgment consistent with their fiduciary duties and constitute reasonably equivalent value and fair consideration.

(e) The DIP Financing has been negotiated in good faith and at arm's length among the Debtors, the DIP Agents and the DIP Lenders, and all of the Debtors' obligations and indebtedness arising under, in respect of or in connection with the DIP Financing and the DIP Documents, including without limitation, all loans and Letters of Credit (as defined in the ABL DIP Facility), the Incremental DIP Term Facility, the Bayside Roll Up DIP Loans (upon entry of the Final Order), and the ABL DIP Facility made to and all guarantees issued by the Debtors pursuant to the DIP Documents, and any other obligations under the DIP Documents (including, with respect to the ABL DIP Facility, all Bank Product Obligations) (all of the foregoing collectively, the "DIP Obligations"), shall be deemed to have been extended by the DIP Agents and the DIP Lenders and their affiliates in good faith, as that term is used in Bankruptcy Code section 364(e), and in express reliance upon the protections offered by Bankruptcy Code section 364(e), and the DIP Obligations, the DIP Liens and the Superpriority Claims shall be entitled to the full protection of Bankruptcy Code section 364(e) in the event that this Interim Order or any provision hereof is vacated, reversed or modified, on appeal or otherwise.

(f) Payment of the ABL Roll Up Obligations reflects the Debtors' exercise of prudent business judgment consistent with their fiduciary duties.

(g) The Debtors have requested entry of this Interim Order pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2) and the Local Rules. Absent granting the relief sought by this Interim Order, the Debtors' estates will be immediately and irreparably harmed. Consummation of the DIP Financing and authorization of the use of Cash Collateral in accordance with this

Interim Order and the DIP Documents is therefore in the best interests of the Debtors' estates consistent with their fiduciary duties.

6. ***Authorization of the DIP Financing and the DIP Credit Agreements.***

(a) The Debtors are hereby authorized to execute and enter into the DIP Documents, including the Bayside DIP Credit Agreement and the ABL DIP Credit Agreement, and the DIP Credit Agreements and other DIP Documents are hereby approved. The DIP Credit Agreements and this Interim Order shall govern the financial and credit accommodations to be provided to the Debtors by the DIP Lenders; *provided* that in the event of a conflict between the DIP Credit Agreements and this Interim Order, this Interim Order shall control.

(b) The Borrowers are hereby authorized to borrow money pursuant to the DIP Credit Agreements, and the Borrowers and the Guarantors are hereby authorized to guaranty such borrowings, up to an aggregate principal or face amount of (i) \$175,000,000 pursuant to the ABL DIP Facility (inclusive of the ABL Roll Up Obligations (plus interest, fees and other expenses and amounts provided for in the DIP Credit Agreements in respect of the DIP Financing)), (ii) \$25,000,000 under the Incremental DIP Term Facility and (iii) upon entry of the Final Order, \$94,667,000.00 in Bayside Roll Up DIP Loans (plus interest, fees and other expenses and amounts provided for in the DIP Credit Agreements in respect of the DIP Financing) ~ (collectively, the "Borrowed Amount").

(c) The Borrowed Amount may be used in accordance with the terms of this Interim Order and the DIP Credit Agreements (and subject to the applicable budget provided for in both DIP Credit Agreements) to, among other things, (x) provide working capital for the Borrowers and the Guarantors (including, without limitation, foreign affiliates guaranteeing the DIP Obligations) and (y) pay interest, fees and expenses in accordance with this Interim Order and

the DIP Documents (including, for the avoidance of doubt, the fees and expenses of the DIP Lenders' professionals, whether incurred pre- or postpetition). In addition, proceeds of the ABL DIP Facility may be used, upon entry of this Interim Order and subject to the rights of parties set forth in paragraph 21 herein, to discharge in full and irrevocably the ABL Roll Up Obligations. The Debtors are also authorized to incur Bank Product Obligations pursuant to the terms of the ABL DIP Facility, including overdrafts and related liabilities arising from treasury, depository and cash management services including any automated clearing house fund transfers provided to or for the benefit of the Debtors by the ABL DIP Agent or any of its affiliates, *provided, however*, that nothing herein shall require the ABL DIP Agent or any other party to incur overdrafts or to provide any such services or functions to the Debtors. The Debtors shall not (A) use the proceeds of the ABL DIP Facility or any proceeds of the ABL Priority Collateral to (i) repay or prepay any of the Prepetition Term Loan Debt or Bayside Roll Up DIP Loans, (ii) pay any Taxes (as defined in the ABL DIP Credit Agreement) upon or as a result of the Disposition (as defined in the DIP Intercreditor Agreement) of Term Loan Priority Collateral or (iii) affirmatively commence or support, or to pay any professional fees incurred in connection with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the liens, claims or rights in favor of the DIP Agents, any DIP Lender, the Prepetition Agents or any Prepetition Lender; or (B) use the proceeds of the Incremental DIP Term Facility or any proceeds of the Term Loan Priority Collateral to (x) repay or prepay any of the Prepetition ABL Debt or the ABL Roll Up Obligations, (y) pay any Taxes (as defined in the Bayside DIP Credit Agreement) upon or as a result of the Disposition of the ABL Priority Collateral or (z) affirmatively commence or support, or to pay any professional fees incurred in connection

with, any adversary proceeding, motion or other action that seeks to challenge, contest or otherwise seek to impair or object to the validity, extent, enforceability or priority of the liens, claims or rights in favor of the DIP Agents, any DIP Lender, the Prepetition Agents or any Prepetition Lender.

(d) In furtherance of the foregoing and without further approval of this Court, each Debtor is authorized and directed to perform all acts, to make, execute and deliver all instruments and documents (including, without limitation, the execution or recordation of security agreements, mortgages and financing statements), and to pay all fees, that may be reasonably required or necessary for the Debtors' performance of their obligations under the DIP Financing, including, without limitation:

(i) the execution, delivery and performance of the DIP Documents, including, without limitation, the DIP Credit Agreements, any security and pledge agreements, any mortgages contemplated thereby and the letter agreements referred to in clause (iii) below;

(ii) the execution, delivery and performance of one or more amendments, waivers, consents or other modifications to and under the DIP Documents for, among other things, the purpose of (A) with respect to the Bayside DIP Facility, adding additional financial institutions as Bayside DIP Lenders and reallocating the commitments for the Bayside DIP Facility among the Bayside DIP Lenders, in each case in such form as the Debtors and the Bayside DIP Agent may agree; and (B) with respect to the ABL DIP Facility, adding additional financial institutions as ABL DIP Lenders and reallocating the commitments for the ABL DIP Facility among the ABL DIP Lenders, in each

case in such form as the Debtors and the ABL DIP Agent may agree; *provided that* no further approval of the Bankruptcy Court shall be required for amendments, waivers, consents or other modifications to and under the DIP Documents (or any non-material fees paid in connection therewith) that do not shorten the maturity of the extensions of credit thereunder or increase the commitments, the rate of interest or the letter of credit fees payable thereunder; *provided, however,* that the Debtors shall provide notice of any material modification or amendment to the DIP Credit Agreements to counsel to any official committee appointed in the Chapter 11 Cases (the "Committee"), counsel to each of the Prepetition Agents and the U.S. Trustee, each of whom shall have five (5) days from the date of such notice within which to object in writing to such modification or amendment. If any Committee, the U.S. Trustee or the Prepetition Agents timely objects to any such material modification or amendment to the DIP Credit Agreements, such modification or amendment shall only be permitted pursuant to an order of this Court;

(iii) the non-refundable payment: (A) solely from proceeds of the Bayside DIP Facility or Term Loan Priority Collateral, to the Bayside DIP Agent or Bayside DIP Lenders, as the case may be, of the fees referred to in the Bayside DIP Credit Agreement (and in the separate letter agreement(s) between them in connection with the Bayside DIP Facility) and the reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in connection with the Bayside DIP Credit Agreement (including, for the avoidance of doubt, all such

fees and expenses incurred prior to the Petition Date); and (B) solely from proceeds of the ABL DIP Facility or ABL Priority Collateral, to the ABL DIP Agent or ABL DIP Lenders, as the case may be, of the fees referred to in the ABL DIP Credit Agreement (and in the separate letter agreement(s) between them in connection with the ABL DIP Facility), and the reasonable costs and expenses as may be due from time to time, including, without limitation, fees and expenses of the professionals retained as provided for in connection with the ABL DIP Credit Agreement;

(iv) the conversion of the Prepetition Term Loan Debt to Bayside Roll Up DIP Loans upon entry of the Final Order;

(v) use of proceeds of the ABL DIP Facility to pay or otherwise satisfy all of the ABL Roll Up Obligations upon entry of this Interim Order; and

(vi) the performance of all other acts required under or in connection with the DIP Documents.

(e) Upon execution and delivery of the DIP Credit Agreements and the other DIP Documents, such DIP Documents shall constitute valid, binding and non-avoidable obligations of the Debtors enforceable against each Debtor party thereto in accordance with their respective terms and the terms of this Interim Order for all purposes during the Chapter 11 Cases, any subsequently converted case of any Debtor under chapter 7 of the Bankruptcy Code or after the dismissal of any Case. No obligation, payment, transfer or grant of security under the DIP Credit Agreements, the other DIP Documents or this Interim Order shall be stayed, restrained, voidable, avoidable or recoverable under the Bankruptcy Code or under any applicable law (including

without limitation, under Bankruptcy Code sections 502(d), 548 or 549 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; *provided, however*, that in the event of a final order sustaining a timely challenge under paragraph 21 hereto that the repayment or deemed satisfaction of the ABL Roll Up Obligations pursuant to the ABL DIP Facility resulted in the repayment or satisfaction of unsecured claims against the Debtors, then the repayment or other satisfaction shall be reversed, the ABL Roll Up Obligations shall be reinstated, and the accompanying obligations under the ABL DIP Facility shall be reduced or otherwise rescinded, on a dollar-for-dollar basis (including the reduction of revolving commitments thereunder).

(f) If the Debtors fail to timely execute and deliver the DIP Credit Agreements and the other DIP Documents as required by the DIP Credit Agreements, then all DIP Obligations, including borrowings and accrued and unpaid interest and fees, incurred by the Debtors pursuant to the DIP Credit Agreements and this Interim Order shall mature and become immediately due and payable, in which event the DIP Lenders shall have the rights provided for in paragraph 12(c) of this Interim Order.

7. ***Payment of the Prepetition ABL Debt.*** The Debtors are authorized and directed to use all Cash Collateral consisting of proceeds of ABL Priority Collateral coming into the possession or control of the Debtors to reduce the ABL Roll Up Obligations arising under or in connection with the Prepetition ABL Credit Agreement. Upon entry of this Interim Order, the Debtors shall be authorized to use the proceeds of the ABL DIP Facility to fully repay or deem issued or incurred under the ABL DIP Facility any ABL Roll Up Obligations.

8. ***Superpriority Claims.*** Pursuant to Bankruptcy Code section 364(c)(1), all of the DIP Obligations shall constitute allowed senior administrative expense claims against each of the Debtors (the “Superpriority Claims”) with priority over any and all administrative expenses, adequate protection claims, diminution claims (including all Adequate Protection Obligations (as defined below)) and all other claims against the Debtors, now existing or hereafter arising, of any kind whatsoever, including, without limitation, all administrative expenses of the kind specified in Bankruptcy Code sections 503(b) or 507(b), and over any and all administrative expenses or other claims arising under Bankruptcy Code sections 105, 326, 328, 330, 331, 503(b), 506(c), 507(a), 507(b), 546, 726, 1113 or 1114, whether or not such expenses or claims may become secured by a judgment lien or other non-consensual lien, levy or attachment, which allowed claims shall for purposes of Bankruptcy Code section 1129(a)(9)(A) be considered administrative expenses allowed under Bankruptcy Code section 503(b), and which shall be payable from and have recourse to all pre- and postpetition property of the Debtors and all proceeds thereof, including, without limitation (subject to entry of the Final Order), all Avoidance Actions (as defined below), subject only to the payment of the Carve-Out to the extent specifically provided for herein. The Superpriority Claims granted hereunder to the Bayside DIP Lenders shall be *pari passu* with the Superpriority Claims granted hereunder to the ABL DIP Lenders.

9. ***Carve-Out.*** The “Carve-Out” means an amount sufficient to satisfy (a) all fees and expenses required to be paid to the Clerk of the Court and to the Office of the U.S. Trustee pursuant to 28 U.S.C. §§ 156(c) and 1930(a)(6) and (b) (i) unpaid allowed fees, expenses, and disbursements of the professionals for the Debtors and the Committee, if any (collectively, the “Professionals”) incurred and accruing after the occurrence and during the continuance of an



Event of Default (as such term is defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) and delivery of a written notification by the ABL DIP Agent to the Bayside DIP Agent and the Prepetition Term Agent, or by the Bayside DIP Agent to the Prepetition ABL Agent and the ABL DIP Agent, of the occurrence of such Event of Default (as such term is defined in the ABL DIP Credit Agreement or Bayside DIP Credit Agreement) for purposes of this paragraph 9 (the “Carve-Out Notice”), in an aggregate amount not in excess of \$500,000 and (ii) unpaid Professionals’ fees and expenses incurred and accruing prior to the delivery of a Carve-Out Notice and as allowed by the Bankruptcy Court and in such amounts (subject to any permitted variance under the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement) not in excess of the permitted line items for such amounts and for such periods as set forth in the budgets set forth in the DIP Credit Agreements and Carve-Out Report (as defined below) (clauses (i) and (ii), collectively, the “Professionals’ Carve-Out”); *provided that* (x) the dollar limitation in this clause (b) on fees and expenses shall neither be reduced nor increased by the amount of any compensation or reimbursement of expenses incurred, awarded or paid prior to the delivery of a Carve-Out Notice in respect of which the Carve-Out is invoked or by any fees, expenses, indemnities or other amounts paid to any Prepetition Agent or Prepetition Secured Lender and (y) nothing herein shall be construed to impair the ability of any party to object to the fees, expenses, reimbursement or compensation described in clauses (i) and (ii) above. As among the DIP Collateral (as defined below), the Professionals’ Carve-Out, if and to the extent invoked pursuant to this Interim Order, shall be allocated one-half against and funded from the ABL Priority Collateral and one-half against and funded from the Term Loan Priority Collateral. The Debtors and their Chief Restructuring Officer (as defined in the ABL DIP Credit Agreement) shall provide to the DIP Agents a written report (the “Carve-Out Report”) every two

weeks disclosing their then-current estimate of (1) the aggregate amount of unpaid professional fees, costs and expenses accrued or incurred by the Professionals through the date of the Carve-Out Report, and (2) projected fees, costs and expenses of the Professionals for the 30-day period following the date of such Carve-Out Report, taking into account projected interim payments during such period. Nothing herein shall be construed as consent by the DIP Agents to the allowance of any fees or expenses of the Professionals or shall affect the right of each DIP Agent to object to the allowance and payment of such fees, costs or expenses, or the right of the DIP Agents to the return of any portion of the Carve-Out that is funded under its respective DIP Documents with respect to fees and expenses for a Professional that are approved on an interim basis but are later denied on a final basis.

10. ***DIP Liens.*** As security for the DIP Obligations, effective and perfected upon the date of this Interim Order and without the necessity of the execution, recordation of filings by the Debtors of mortgages, security agreements, control agreements, pledge agreements, financing statements or other similar documents, or the possession or control by any DIP Agent or DIP Lender of or over any DIP Collateral, the following security interests and liens are hereby granted by the Debtors to the DIP Agents for their own benefit and the respective benefit of the applicable DIP Lenders (all property identified in clauses (a), (b) and (c) below being collectively referred to as the “DIP Collateral”), subject, only in the event of the occurrence and during the continuance of an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement), to the payment of the Carve-Out (all such liens and security interests granted to the DIP Agents, for their own benefit and the respective benefit of the applicable DIP Lenders, pursuant to this Interim Order and the DIP Documents, the “DIP Liens”):

(a) *First Lien on Unencumbered Property.* Subject to the terms of the Intercreditor Agreements, pursuant to Bankruptcy Code section 364(c)(2), a valid, binding, continuing, enforceable, fully perfected first priority senior security interest in and lien upon all pre- and postpetition property of the Debtors or their estates, whether existing on the Petition Date or thereafter acquired, that, on or as of the Petition Date is not subject to valid, perfected and non-avoidable liens (collectively, "Unencumbered Property"), including, without limitation, any such unencumbered cash of the Debtors (whether maintained with a DIP Agent or otherwise) and any investment of such cash, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names, other intellectual property, commercial tort claims, equity interests, and the proceeds of all the foregoing. Subject only to and effective upon entry of the Final Order, Unencumbered Property shall also include the Debtors' claims and causes of action under Bankruptcy Code sections 502(d), 544, 545, 547, 548, 549, 550, and 553 and any other avoidance actions under the Bankruptcy Code and the proceeds thereof and property received thereby whether by judgment, settlement or otherwise (collectively, "Avoidance Actions").

(b) *Liens Priming Prepetition Secured Parties' Liens.* Except as otherwise set forth in paragraph 11 herein, pursuant to Bankruptcy Code section 364(d)(1), a valid, binding, continuing, enforceable, fully perfected first priority senior priming security interest in and lien upon all pre- and postpetition property of the Debtors (including, without limitation, Cash Collateral, inventory, accounts receivable, other rights to payment whether arising before or after the Petition Date, contracts, properties, plants, equipment, general intangibles, documents, instruments, interests in leaseholds, real properties, patents, copyrights, trademarks, trade names,

other intellectual property, equity interests, and the proceeds of all the foregoing), whether now existing or hereafter acquired, that is subject to any existing lien presently securing the Prepetition Debt (including in respect of issued but undrawn letters of credit). The liens on (i) the ABL Priority Collateral securing the ABL Priority Debt (as defined in the DIP Intercreditor Agreement) shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current or future liens of the Prepetition Secured Parties (including, without limitation, adequate protection liens granted hereunder) and (ii) the Term Loan Priority Collateral securing the Term Loan Priority Debt (as defined in the DIP Intercreditor Agreement) shall be senior in all respects to the interests in such property of the Prepetition Secured Parties arising from current or future liens of the Prepetition Secured Parties (including, without limitation, adequate protection liens granted hereunder). The security interests and liens on the DIP Collateral securing the Bayside DIP Facility and the ABL DIP Facility shall be junior to any valid, perfected, enforceable and unavoidable security interests and liens of parties other than the DIP Agents, if any, on such property existing immediately prior to the Petition Date, or to any valid, perfected and unavoidable interests in such property arising out of liens to which the liens of the Prepetition Secured Parties may become subject subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b).

(c) *Liens Junior to Certain Other Liens.* Except as otherwise set forth in paragraph 11 herein, pursuant to Bankruptcy Code section 364(c)(3), a valid, binding, continuing, enforceable, fully perfected security interest in and lien upon all pre- and postpetition property of the Debtors (other than the property described in clauses (a) or (b) of this paragraph 10, as to which the liens and security interests in favor of the DIP Agents will be as described in such clauses), whether now existing or hereafter acquired, that is subject to valid, perfected and

unavoidable liens in existence immediately prior to the Petition Date or to valid and unavoidable liens in existence immediately prior to the Petition Date that are perfected subsequent to the Petition Date as permitted by Bankruptcy Code section 546(b), which security interests and liens in favor of the DIP Agents are junior to such valid, perfected and unavoidable liens.

(d) *Liens Senior to Certain Other Liens.* The DIP Liens and the Adequate Protection Liens (as defined below) shall not be subject or subordinate to (i) any lien or security interest that is avoided and preserved for the benefit of the Debtors and their estates under Bankruptcy Code section 551, (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 Debtors to the extent permitted by applicable non-bankruptcy law or (iii) any intercompany or affiliate liens of the Debtors.

11. ***Priority of DIP Liens.*** Notwithstanding anything to the contrary herein, and subject to entry of the Final Order to the extent this paragraph 11 relates to the DIP Liens granted in respect of the Bayside Roll Up DIP Loans, (a) the DIP Liens granted hereunder to the Bayside DIP Lenders (the “Bayside DIP Liens”) shall be immediately junior in priority and subject to the DIP Liens granted to the ABL DIP Lenders and to the prepetition liens granted to the Prepetition ABL Agent in respect of the ABL Priority Collateral, (b) the DIP Liens granted hereunder to the ABL DIP Lenders (the “Wells DIP Liens”) shall be immediately junior in priority and subject to the Bayside DIP Liens and to the prepetition liens granted to the Prepetition Bayside Agent in respect of the Term Loan Priority Collateral; *provided that*, subject to and effective upon entry of the Final Order and subject to entry of a final order in favor of a plaintiff sustaining a Lender Claim brought pursuant to paragraph 21 of this Interim Order, (i) if any Prepetition ABL Lender is required to turn over, disgorge or otherwise pay to the Debtors’ estates any amount paid in

respect of the Prepetition ABL Debt, then the Prepetition ABL Lenders shall be entitled to a reinstatement of Prepetition ABL Debt with respect to all such amounts and (ii) if any Prepetition Term Loan Lender is required to turn over, disgorge or otherwise pay to the Debtors' estates any amount paid in respect of the Prepetition Term Loan Debt, then the Prepetition Term Loan Lenders shall be entitled to a reinstatement of Prepetition Term Loan Debt with respect to all such amounts. The ABL Priority Collateral shall include the proceeds of the Avoidance Actions described in subclause (i) above, subject to entry of the Final Order, and the Wells DIP Liens granted hereunder in respect of such Avoidance Actions shall be senior to the Bayside DIP Liens granted hereunder; the Term Loan Priority Collateral shall include the proceeds of the Avoidance Actions described in subclause (ii) above, subject to entry of the Final Order, and the Bayside DIP Liens granted hereunder in respect of such Avoidance Actions shall be senior to the Wells DIP Liens granted hereunder; and the DIP Liens granted hereunder in respect of the proceeds of all Avoidance Actions not covered by subclauses (i) or (ii) above shall rank *pari passu* as between the DIP Agents.

**12. *Protection of DIP Lenders' Rights.***

(a) All DIP Collateral shall be free and clear of all liens, claims and encumbrances, except for those liens, claims and encumbrances expressly permitted under the DIP Documents or this Interim Order.

(b) Subject to the terms of the DIP Intercreditor Agreement, so long as there are any borrowings or letters of credit or other amounts (other than contingent indemnity obligations as to which no claim has been asserted when all other amounts have been paid and no letters of credit are outstanding) outstanding under the DIP Documents, (1) the Prepetition Term Loan Agent and Prepetition Term Loan Lenders shall (i) take no action to foreclose upon or recover in

connection with the liens granted thereto pursuant to the Prepetition Loan Documents or this Interim Order, or otherwise exercise remedies against any ABL Priority Collateral, except to the extent authorized by an order of this Court, (ii) be deemed to have consented to any release of ABL Priority Collateral authorized under the DIP Documents and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the ABL Priority Collateral unless, solely as to this clause (iii), the ABL DIP Agent or ABL DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, 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 (2) the Prepetition ABL Agent and Prepetition ABL Lenders shall (i) take no action to foreclose upon or recover in connection with the liens granted thereto pursuant to the Prepetition Loan Documents or this Interim Order, or otherwise exercise remedies against any Term Loan Priority Collateral, except to the extent authorized by an order of this Court, (ii) be deemed to have consented to any release of Term Loan Priority Collateral authorized under the DIP Documents and (iii) not file any further financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or otherwise take any action to perfect their security interests in the Term Loan Priority Collateral unless, solely as to this clause (iii), the Bayside DIP Agent or Bayside DIP Lenders file financing statements or other documents to perfect the liens granted pursuant to this Interim Order, 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.

(c) The automatic stay provisions of Bankruptcy Code section 362 are vacated and modified to the extent necessary to permit the DIP Agents and the DIP Lenders to exercise

(i) immediately upon the occurrence of an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement), all rights and remedies under the applicable DIP Documents other than those rights and remedies against the DIP Collateral as provided in clause (ii) below and (ii) upon the occurrence and during the continuance of an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) and the giving of five business days' prior written notice to the Debtors (with a copy to counsel to any Committee, if appointed, and to the U.S. Trustee) to the extent provided for in any DIP Document, all rights and remedies against the DIP Collateral provided for in any DIP Document (including, without limitation, the right to set off against accounts maintained by the Debtors with any DIP Agent or DIP Lender or any affiliate thereof). In any hearing regarding any exercise of rights or remedies, the only issue that may be raised by any party in opposition thereto shall be whether, in fact, an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) has occurred and is continuing, and the Debtors and the Prepetition Secured Parties hereby each waive their right to seek relief, including, without limitation, under Bankruptcy Code section 105, to the extent such relief would in any way impair or restrict the rights and remedies of either DIP Agent or the DIP Lenders set forth in this Interim Order or the DIP Documents. In no event shall the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders be subject to the equitable doctrine of "marshaling" or any similar doctrine with respect to the DIP Collateral. The delay or failure to exercise rights and remedies under the applicable DIP Documents or this Interim Order by any of the DIP Agents or DIP Lenders shall not constitute a waiver of such DIP Agent's or such DIP Lender's rights hereunder, thereunder or otherwise, unless any such waiver is pursuant to a written instrument executed in accordance with the terms of the applicable DIP Documents.



13. ***Limitation on Charging Expenses Against Collateral.*** Subject only to and effective upon entry of the Final Order, except to the extent of the Carve-Out, no costs or expenses of administration of the Chapter 11 Cases or any future proceeding that may result therefrom, including liquidation in chapter 7 or other proceedings under the Bankruptcy Code, shall be charged against or recovered from the DIP Collateral, the Prepetition Priority Collateral or the Cash Collateral pursuant to Bankruptcy Code sections 506(c), 552(b) or 105(a) or any similar principle of law without the prior written consent of the DIP Agents or the Prepetition Agents, as the case may be, and no such consent shall be implied from any other action, inaction, or acquiescence by the DIP Agents, the DIP Lenders, the Prepetition Agents or the Prepetition Secured Lenders.

14. ***Cash Collateral.*** With the exception of any funds in a blocked account pursuant to the Prepetition ABL Documents, to the extent any funds of the Debtors were on deposit with any Prepetition Secured Party as of the Petition Date, including, without limitation, all funds deposited in, or credited to, an account of any Debtor with any Prepetition Secured Party immediately prior to the filing of the Debtors' chapter 11 petitions (regardless of whether, as of the time of filing, such funds had been collected or made available for withdrawal by any such Debtor), such funds (the "Deposited Funds") are subject to rights of setoff, except as otherwise set forth in the DIP Intercreditor Agreement. By virtue of such setoff rights, the Deposited Funds are subject to a lien in favor of such Prepetition Secured Party, giving rise to a secured claim pursuant to Bankruptcy Code sections 506(a) and 553. The Prepetition Secured Parties are obligated, to the extent provided in the Prepetition Loan Documents and subject to the terms of the DIP Intercreditor Agreement, as the case may be, to share the benefit of such liens and setoff rights with the other Prepetition Secured Parties that are party to or are otherwise beneficiaries of

such documents. Pursuant to Bankruptcy Code section 552, any proceeds of the Prepetition Priority Collateral of the Prepetition Secured Parties (including, without limitation, the Deposited Funds or any other funds on deposit at the Prepetition Secured Parties or at any other institution as of the Petition Date) are Cash Collateral of the applicable Prepetition Secured Parties within the meaning of Bankruptcy Code section 363(a). The Deposited Funds, all cash proceeds of the Prepetition Priority Collateral of the Prepetition Secured Parties and all other cash collateral (as defined in the Bankruptcy Code) of the Prepetition Secured Parties constitutes "Cash Collateral" hereunder.

15. ***Use of Cash Collateral.*** Except on the terms and conditions of this Interim Order and the Intercreditor Agreements, the Debtors shall be enjoined and prohibited from using the Cash Collateral absent further order of this Court. The Debtors' right to use Cash Collateral, and the Prepetition Secured Parties' consent to use of Cash Collateral, shall terminate automatically on the Maturity Date (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement, as applicable).

16. ***Adequate Protection.*** Subject to the terms of the Intercreditor Agreements, the Prepetition Secured Parties are entitled, pursuant to Bankruptcy Code sections 361, 363(e) and 364(d)(1), to adequate protection of their interests in their respective Prepetition Priority Collateral, including the Cash Collateral, for and equal in amount to the aggregate diminution in the value of the Prepetition Secured Parties' interest in the Prepetition Priority Collateral, including, without limitation, any such diminution resulting from the sale, lease or use by the Debtors (or other decline in value) of Cash Collateral and any other Prepetition Priority Collateral, the priming of the Prepetition Secured Parties' security interests and liens in the Prepetition Priority Collateral by the DIP Agents and the DIP Lenders pursuant to the DIP

Documents and this Interim Order, and the imposition of the automatic stay pursuant to Bankruptcy Code section 362. As adequate protection, the Prepetition Secured Parties are hereby granted the following (collectively, the “Adequate Protection Obligations”):

(a) ***Adequate Protection Liens.*** Subject to the terms of the DIP Intercreditor Agreement, the Prepetition Agents (for themselves and for the respective benefit of the applicable Prepetition Secured Lenders) are hereby granted (effective and perfected upon the date of this Interim Order and without the necessity of the execution by the Debtors of mortgages, security agreements, pledge agreements, financing statements or other agreements) a replacement security interest in and lien upon all DIP Collateral, subject and subordinate only to (i) the DIP Liens and any liens on the DIP Collateral that are senior to, or *pari passu* with, the DIP Liens and (ii) the Carve-Out (the “Adequate Protection Liens”). The Adequate Protection Liens granted hereunder to the Prepetition Secured Parties shall rank as follows: (i) the Adequate Protection Liens granted hereunder to the Prepetition ABL Agent shall be immediately junior in priority and subject to the Adequate Protection Liens granted hereunder to the Prepetition Term Loan Agent in respect of the Term Loan Priority Collateral and (ii) the Adequate Protection Liens granted hereunder to the Prepetition Term Loan Agent shall be immediately junior in priority and subject to the Adequate Protection Liens granted to the Prepetition ABL Agent in respect of the ABL Priority Collateral.

(b) ***Section 507(b) Claims.*** Subject to the terms of the DIP Intercreditor Agreement, the Prepetition Agents (for themselves and for the respective benefit of the applicable Prepetition Secured Lenders) are hereby granted, subject to the payment of the Carve-Out, allowed superpriority claims as provided for in Bankruptcy Code section 507(b), immediately junior to the claims under Bankruptcy Code section 364(c)(1) held by the DIP Agents and the DIP

Lenders; *provided however* that none of the Prepetition Secured Parties shall receive or retain any payments, property or other amounts in respect of the superpriority claims under Bankruptcy Code section 507(b) granted hereunder or under the Prepetition Loan Documents unless and until the DIP Obligations have indefeasibly been paid in cash in full or as otherwise agreed by the DIP Lenders or as provided in the DIP Documents. The superpriority claims granted hereunder to the Prepetition Secured Parties shall rank *pari passu* as between the Prepetition Agents.

(c) ***Payment of Interest.*** Subject to the limitations regarding the use of proceeds and DIP Collateral as set forth in the ABL DIP Credit Agreement and the Bayside DIP Credit Agreement and otherwise subject to the terms of the Intercreditor Agreements, the Prepetition Agents, for the benefit of the Prepetition Secured Lenders, shall receive (i) the immediate cash payment of all accrued and unpaid prepetition interest at the rates provided for in the applicable Prepetition Loan Documents and all other accrued and unpaid fees and disbursements owing to the Prepetition Secured Lenders or Prepetition Agents, as applicable, under the applicable Prepetition Loan Documents incurred prior to the Petition Date and (ii) the current cash payment of all interest accruing after the Petition Date at the rates provided for in the applicable Prepetition Loan Documents.

(d) ***Fees and Expenses.*** The Prepetition Agents and the Prepetition Secured Lenders shall receive from the Debtors current cash payments of all fees and expenses payable to the Prepetition Agents or the Prepetition Secured Lenders, as applicable, under the Prepetition Loan Documents, including, but not limited to, the reasonable fees and disbursements of counsel, financial and other consultants for the Prepetition Agents or Prepetition Secured Lenders promptly upon receipt of 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 before and after the Petition Date; *provided, however*, that the Prepetition Agents and the Prepetition Secured Lenders shall submit copies of their respective professional fee invoices for postpetition fees and expenses to the Debtors, and the Debtors shall send copies of such invoices to the U.S. Trustee and any Committee within five (5) business days from receipt thereof, and the U.S. Trustee and any Committee shall have five (5) business days from receipt thereof to object in writing to the reasonableness of such invoices; to the extent that the U.S. Trustee or any Committee so objects to any such invoices, the Debtors shall remit payment on account of the portion of such invoices to which there has been no objection, and payment of the allegedly unreasonable portion of such invoices will be subject to review by the Bankruptcy Court; *provided, further, however*, if applicable, that such invoices may be redacted to the extent necessary to delete any information subject to the attorney-client privilege, any information constituting attorney work product or any other confidential information, and the provision of such invoices shall not constitute any waiver of the attorney-client privilege or any benefits of the attorney work product doctrine. Notwithstanding anything in the foregoing to the contrary, all fees and expenses payable to (i) the Bayside DIP Agent, the Bayside DIP Lenders, the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders shall be paid solely from the proceeds of Term Priority Collateral and the Bayside DIP Facility and (ii) the ABL DIP Agent, the ABL DIP Lenders, the Prepetition ABL Agent or the Prepetition ABL Lenders shall be paid solely from the proceeds of ABL Priority Collateral and the ABL DIP Facility. The Bayside DIP Agent and the ABL DIP Agent may charge the applicable loan accounts to pay for such fees and expenses.

(e) ***Monitoring of Collateral.*** Each of the Prepetition Agents shall be permitted to retain separate expert consultants and financial advisors at the expense of the Debtors, which

consultants and advisors shall be given reasonable access for purposes of monitoring the Debtors' businesses and the value of the DIP Collateral. Notwithstanding anything in the foregoing to the contrary, all reasonable and documented expenses, as provided for in the Prepetition Loan Documents, as applicable, relating to (i) any consultants or financial advisors retained by the Prepetition Term Loan Agent or the Prepetition Term Loan Lenders shall be paid solely from the proceeds of Term Loan Priority Collateral and the Bayside DIP Facility and (ii) any consultants or financial advisors retained by the Prepetition ABL Agent or the Prepetition ABL Lenders shall be paid solely from the proceeds of ABL Priority Collateral and the ABL DIP Facility.

(f) ***Financial Reporting.*** The Debtors shall provide the Prepetition Agents with financial and other reporting as described in the DIP Documents.

17. ***Reservation of Rights of Prepetition Secured Parties.*** Under the circumstances and given that the above-described adequate protection is consistent with the Bankruptcy Code, including section 506(b) thereof, the Bankruptcy Court finds that the adequate protection provided herein is reasonable and sufficient to protect the interests of the Prepetition Secured Parties. However, each Prepetition Agent may request further or different adequate protection, and the Debtors or any other party may contest any such request; *provided* that, except as otherwise provided in the DIP Intercreditor Agreement, any such further or different adequate protection shall at all times be subordinate and junior to the claims and liens of the DIP Agents and the DIP Lenders granted under this Interim Order and the DIP Documents. Except as expressly provided herein, nothing contained in this Interim Order (including, without limitation, the authorization of the use of any Cash Collateral) shall impair or modify any rights, claims or defenses available in law or equity to any Prepetition Secured Party, DIP Agent or DIP Lender,

including, without limitation, rights of a party to a swap agreement, securities contract, commodity contract, forward contract or repurchase agreement with a Debtor to assert rights of setoff or other rights with respect thereto as permitted by law (or the right of a Debtor to contest such assertion).

18. ***Perfection of DIP Liens and Adequate Protection Liens.***

(a) Subject to the provisions of paragraph 10(b) above, the Debtors, the DIP Agents, the DIP Lenders and the Prepetition Secured Parties are hereby authorized, but not required, to file or record financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments in any jurisdiction, or take possession of or control over, or take any other action in order to validate and perfect the liens and security interests granted to them hereunder. Whether or not the DIP Agents on behalf of the DIP Lenders or the Prepetition Agents on behalf of the Prepetition Secured Lenders shall, in their sole discretion, choose to file such financing statements, trademark filings, copyright filings, mortgages, notices of lien or similar instruments, or take possession of or control over, or otherwise confirm perfection of the liens and security interests granted to them hereunder, such liens and security interests shall be deemed valid, perfected, allowed, enforceable, non-avoidable and not subject to challenge, dispute or subordination, at the time and on the date of entry of this Interim Order. Upon the request of either DIP Agent, each of the Prepetition Secured Parties, without any further consent of any party, is authorized to take, execute, deliver and file such instruments (in each case without representation or warranty of any kind) to enable the DIP Agents to further validate, perfect, preserve and enforce the DIP Liens. The Debtors shall execute and deliver to the DIP Agents and the Prepetition Agents all such agreements, financing statements, instruments and other documents as the DIP Agents and the Prepetition Agents may reasonably request to more

fully evidence, confirm, validate, perfect, preserve and enforce the DIP Liens and the Adequate Protection Liens. All such documents will be deemed to have been recorded and filed as of the Petition Date.

(b) A certified copy of this Interim Order may, in the discretion of the DIP Agents, be filed with or recorded in filing or recording offices in addition to or in lieu of such financing statements, mortgages, notices of lien or similar instruments, and all filing offices are hereby authorized to accept such certified copy of this Interim Order for filing and recording.

(c) Subject to entry of the Final Order and after notice to any affected landlord or other parties, any provision of any lease or other license, contract or other agreement that requires (i) the consent or approval of one or more landlords or other parties or (ii) the payment of any fees or obligations to any governmental entity, in order for any Debtor to pledge, grant, sell, assign or otherwise transfer any such leasehold interest, or the proceeds thereof, or other postpetition collateral related thereto, is hereby deemed to be inconsistent with the applicable provisions of the Bankruptcy Code. Any such provision shall have no force and effect with respect to the transactions granting postpetition liens, in such leasehold interest or the proceeds of any assignment and/or sale thereof by any Debtor, in favor of the DIP Lenders in accordance with the terms of the DIP Documents or this Interim Order.

19. ***Preservation of Rights Granted Under this Interim Order.***

(a) Subject to the terms of the DIP Intercreditor Agreement, no claim or lien having a priority superior to or *pari passu* with those granted by this Interim Order to the DIP Agents, the DIP Lenders or the Prepetition Secured Parties shall be granted or allowed until the occurrence of (i) the payment in full in cash or immediately available funds of all of the DIP Obligations, Prepetition Debt and Adequate Protection Obligations, (ii) the termination or expiration of all



commitments to extend credit to Debtors, (iii) with respect to the ABL Roll Up Obligations and ABL DIP Facility, the termination of, or providing Cash Collateral in respect of all outstanding letters of credit and Bank Product Obligations that comprise a portion of the ABL Roll Up Obligations or ABL DIP Facility, as set forth in the Prepetition ABL Credit Agreement or ABL DIP Credit Agreement, respectively, and (iv) the cash collateralization in respect of any asserted or threatened claims, demands, actions, suits, proceedings, investigations, liabilities, fines, costs, penalties, or damages for which any Prepetition Secured Lender, any DIP Lender, Prepetition Agent or DIP Agent may be entitled to indemnification by any Debtor pursuant to the indemnification provisions in the Prepetition Loan Documents and Loan Documents (as defined in the applicable DIP Credit Agreement), as applicable ("Paid in Full"). While any portion of the DIP Financing (or any refinancing thereof), the DIP Obligations or the Adequate Protection Obligations remain outstanding and the commitments thereunder have not been terminated, the DIP Liens and the Adequate Protection Liens shall not be (x) subject or junior to any lien or security interest that is avoided and preserved for the benefit of the Debtors' estates under Bankruptcy Code section 551 or (y) subordinated to or made *pari passu* with any other lien or security interest, whether under Bankruptcy Code section 364(d) or otherwise.

(b) Unless all DIP Obligations shall have indefeasibly been Paid in Full (and, with respect to outstanding letters of credit issued and Bank Product Obligations pursuant to the ABL DIP Credit Agreement, cash collateralized in accordance with the provisions thereof) and the Adequate Protection Obligations shall have been indefeasibly paid in cash in full, the Debtors shall not seek, and it shall constitute an Event of Default (as defined in the ABL DIP Credit Agreement or the Bayside DIP Credit Agreement) and terminate the right of the Debtors to use Cash Collateral if any of the Debtors seek, or if there is entered, (i) any modification or extension

of this Interim Order without the prior written consent of the ABL DIP Agent, in the case of the ABL DIP Facility, or the Bayside DIP Agent, in the case of the Bayside DIP Facility (or, if the DIP Obligations have been indefeasibly paid in cash in full, the Prepetition Agents, to the extent of any outstanding Prepetition Debt), and no such consent shall be implied by any other action, inaction or acquiescence, or (ii) an order converting or dismissing any of the Chapter 11 Cases.

(c) If an order dismissing any of the Chapter 11 Cases under Bankruptcy Code section 1112 or otherwise is at any time entered, such order shall provide (in accordance with Bankruptcy Code sections 105 and 349) that (i) the Superpriority Claims, priming liens, security interests and replacement security interests granted to the DIP Agents and the DIP Lenders and, as applicable, the Prepetition Secured Parties pursuant to this Interim Order shall continue in full force and effect and shall maintain their priorities as provided in this Interim Order until all DIP Obligations and Adequate Protection Obligations shall have been indefeasibly paid in cash in full (and that such Superpriority Claims, priming liens and replacement security interests, shall, notwithstanding such dismissal, remain binding on all parties in interest) and (ii) to the extent permitted by applicable law, this Court shall retain jurisdiction, notwithstanding such dismissal, for the purposes of enforcing the claims, liens and security interests referred to in (i) above.

(d) If any or all of the provisions of this Interim Order are hereafter reversed, modified, vacated or stayed, such reversal, stay, modification or vacation shall not affect (i) the validity, priority or enforceability of any DIP Obligations or Adequate Protection Obligations incurred prior to the actual receipt of written notice by the DIP Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, stay, modification or vacation or (ii) the validity or enforceability of any lien or priority authorized or created hereby or pursuant to the DIP Documents with respect to any DIP Obligations, or the Adequate Protection Obligations.

Notwithstanding any such reversal, stay, modification or vacation, any use of Cash Collateral, DIP Obligations or Adequate Protection Obligations incurred by the Debtors to the DIP Agents, the DIP Lenders or the Prepetition Secured Parties prior to the actual receipt of written notice by the DIP Agents or the Prepetition Agents, as applicable, of the effective date of such reversal, stay, modification or vacation shall be governed in all respects by the original provisions of this Interim Order, and the DIP Agents, the DIP Lenders and the Prepetition Secured Parties shall be entitled to all the rights, remedies, privileges and benefits granted in Bankruptcy Code section 364(e), this Interim Order and pursuant to the DIP Documents with respect to all uses of Cash Collateral, the DIP Obligations and the Adequate Protection Obligations.

(e) Except as expressly provided in this Interim Order or in the DIP Documents, the DIP Liens, the Superpriority Claims, the Adequate Protection Obligations and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by the provisions of this Interim Order and the DIP Documents shall survive, and shall not be modified, impaired or discharged by (i) the entry of an order converting any of the Chapter 11 Cases to a case under chapter 7, dismissing any of the Chapter 11 Cases, terminating the joint administration of these Chapter 11 Cases or by any other act or omission or (ii) the entry of an order confirming a plan of reorganization in any of the Chapter 11 Cases and, pursuant to Bankruptcy Code section 1141(d)(4), the Debtors have waived any discharge as to any remaining DIP Obligations. The terms and provisions of this Interim Order and the DIP Documents shall continue in these Chapter 11 Cases, in any successor cases if these Chapter 11 Cases cease to be jointly administered, or in any superseding chapter 7 cases under the Bankruptcy Code, and the DIP Liens, the Superpriority Claims and the Adequate Protection Obligations and all other rights and remedies of the DIP Agents, the DIP Lenders and the Prepetition Secured Parties granted by

the provisions of this Interim Order and the DIP Documents shall continue in full force and effect until the DIP Obligations and the Adequate Protection Obligations are Paid in Full.

20. ***Limitation on Use of DIP Financing Proceeds and Collateral.*** Notwithstanding anything herein or in any other order by this Court to the contrary, no borrowings, proceeds of letters of credit, Cash Collateral, Prepetition Priority Collateral, DIP Collateral, portion of the proceeds of the DIP Financing or part of the Carve-Out may be used for any of the following (each, a “Lender Claim”) without the prior written consent of the Prepetition Agents: (a) to object, contest or raise any defense to, the validity, perfection, priority, extent or enforceability of any amount due under the DIP Documents or the Prepetition Loan Documents, or the liens or claims granted under this Interim Order, the DIP Documents or the Prepetition Loan Documents, (b) investigate or assert any claims, defenses or causes of action against the DIP Agents, the DIP Lenders, the Prepetition Agents, or the Prepetition Secured Lenders, or their respective agents, affiliates, representatives, attorneys or advisors, (c) prevent, hinder or otherwise delay the DIP Agents’ assertion, enforcement or realization on the Cash Collateral or the DIP Collateral in accordance with the DIP Documents or this Interim Order, (d) seek to modify any of the rights granted to the DIP Agents or the DIP Lenders hereunder or under the DIP Documents, in each of the foregoing cases without such applicable parties’ prior written consent or (e) pay any amount on account of any claims arising prior to the Petition Date unless such payments are (i) approved by an order of this Court and (ii) in accordance with the DIP Credit Agreements. Notwithstanding the foregoing, any party other than the Debtors may investigate claims and issues with respect to the Prepetition Loan Documents (the “Investigation”) and, subject to any applicable law with respect to standing, commence and prosecute any related proceedings as a representative of the Debtors’ estates; *provided that* in the case of a Committee (if appointed),

not more than \$25,000 of DIP Collateral shall be used for such Investigation of the Prepetition Loan Documents.

21. *Effect of Stipulations on Third Parties.*

(a) Each stipulation, admission and agreement contained in this Interim Order, including, without limitation, in paragraph 4 of this Interim Order, shall be binding upon the Debtors and any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors) under all circumstances and for all purposes, and the Debtors are deemed to have irrevocably waived and relinquished all Lender Claims as of the date of entry of this Interim Order. Each stipulation, admission and agreement contained in this Interim Order, including, without limitation, in paragraph 4 of this Interim Order, shall also be binding upon all other parties in interest, including, without limitation, any Committee (if appointed), under all circumstances and for all purposes, except to the extent that (i) a party in interest has, subject to the limitations contained herein, including, *inter alia*, in paragraph 21, timely and properly filed an adversary proceeding asserting a Lender Claim with respect to any of the stipulations or admissions set forth in paragraph 4 by no later than the earlier of the date that is (X) seventy-five (75) days after the Petition Date or (Y) with respect to any Lender Claim asserted by any Committee, sixty (60) days (or such later date as has been agreed to, in writing, by the applicable Prepetition Agent in its sole discretion) after the appointment of the Committee, and (ii) there is a final order in favor of the plaintiff sustaining such Lender Claim.

(b) The success of any particular Lender Claim shall not alter the binding effect on each party in interest of any stipulation or admission not subject to such Lender Claim. Except to the extent (but only to the extent) a timely and properly filed adversary proceeding asserting a Lender Claim is successful, (i) the Prepetition Debt shall constitute allowed claims, not subject to

avoidance, recharacterization, recovery, subordination, attack, offset, counterclaims, defense or “claim” (as defined in the Bankruptcy Code) of any kind pursuant to the Bankruptcy Code or other applicable law, for all purposes in the Chapter 11 Cases and any subsequent chapter 7 cases, (ii) the Prepetition Security Interests shall be deemed to have been, as of the Petition Date, legal, valid, binding perfected and enforceable liens and security interests not subject to avoidance, recharacterization, recovery, subordination, attack, offset, counterclaims, defense or “claim” (as defined in the Bankruptcy Code) of any kind, and (iii) the Prepetition Debt and the Prepetition Security Interests shall not be subject to any other or further challenge by any party in interest seeking to exercise the rights of the Debtors’ estates, including, without limitation, any successor thereto (including, without limitation, any chapter 7 or chapter 11 trustee appointed or elected for any of the Debtors).

(c) Nothing in this Interim Order vests or confers on any person (as defined in the Bankruptcy Code), including a Committee, if appointed, standing or authority to pursue any cause of action belonging to the Debtors or their estates, including, without limitation, Lender Claims with respect to the Prepetition Loan Documents or the Prepetition Debt.

(d) Upon approval of the Final Order, notwithstanding anything to the contrary herein, upon written notice to the landlord of any of Debtors’ leased premises that an Event of Default (as defined in the Bayside DIP Credit Agreement or ABL DIP Credit Agreement) has occurred and is continuing, each DIP Agent may enter upon such leased premises for the purpose of exercising any right or remedy with respect to the collateral located thereon and shall be entitled to the Debtors' rights and privileges under such lease(s) without interference from such landlord; provided that such DIP Agent shall pay to such landlord rent first accruing after the above referenced written notice and during the period of occupancy by such DIP Agent,

calculated on a per diem basis and any such amount paid shall be deemed to be DIP Obligations, as applicable.

22. *Collateral Agent.*

(a) Subject to the terms of the Intercreditor Agreements, to the extent that the Prepetition Term Loan Agent is (a) the secured party under any account control agreements in connection with the Prepetition Term Loan Documents, (b) listed as loss payee under the Debtors' insurance policies in connection with the Prepetition Term Loan Documents, or (c) the secured party under any Prepetition Term Loan Document, so shall the Bayside DIP Agent (x) be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition Term Loan Document, (y) have all rights and powers attendant to that position (including, without limitation, rights of enforcement) and (z) act in that capacity and distribute any proceeds recovered or received first, for the benefit of the Bayside DIP Lenders in accordance with the Bayside DIP Credit Agreement and the DIP Intercreditor Agreement, and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Prepetition Term Loan Lenders, to the extent of any outstanding Prepetition Term Loan Debt.

(b) To the extent that the Prepetition ABL Agent is (a) the secured party under any account control agreements in connection with the Prepetition ABL Documents, (b) listed as loss payee under the Debtors' insurance policies in connection with the Prepetition ABL Documents, or (c) the secured party under any Prepetition ABL Document, so shall the ABL DIP Agent (x) be deemed to be the secured party under such account control agreements, loss payee under the Debtors' insurance policies and the secured party under each such Prepetition ABL Document, (y) have all rights and powers attendant to that position (including, without

limitation, rights of enforcement) and (z) act in that capacity and distribute any proceeds recovered or received first, for the benefit of the ABL DIP Lenders in accordance with the ABL DIP Credit Agreement and the DIP Intercreditor Agreement, and second, subsequent to indefeasible payment in full of all DIP Obligations, for the benefit of the Prepetition ABL Lenders, to the extent of any outstanding Prepetition ABL Debt.

(c) Each Prepetition Agent shall serve as agent for the DIP Agents for purposes of perfecting their respective security interests in and liens on all DIP Collateral that is of a type such that perfection of a security interest therein may be accomplished only by possession or control by a secured party.

23. ***Order Governs.*** In the event of any inconsistency between the provisions of this Interim Order and the DIP Documents, the provisions of this Interim Order shall govern.

24. ***Binding Effect; Successors and Assigns.*** The DIP Documents and the provisions of this Interim Order, including all findings herein, shall be binding upon all parties in interest in these Chapter 11 Cases, including, without limitation, the DIP Agents, the DIP Lenders, the Prepetition Secured Parties, any Committee appointed and the Debtors and their respective successors and assigns (including any chapter 7 or chapter 11 trustee hereinafter appointed or elected for the estate of any of the Debtors, an examiner appointed pursuant to Bankruptcy Code section 1104 or any other fiduciary appointed as a legal representative of any of the Debtors or with respect to the property of the estate of any of the Debtors) and shall inure to the benefit of the DIP Agents, the DIP Lenders, the Prepetition Secured Parties and the Debtors and their respective successors and assigns, *provided, however*, that the DIP Agents, the DIP Lenders, the Prepetition Agents and the Prepetition Secured Lenders shall have no obligation to permit the use of Cash Collateral or to extend any financing to any chapter 7 trustee or similar responsible



person appointed for the estates of the Debtors. In determining to make any loan (whether under the DIP Credit Agreements, promissory notes or otherwise) or permit the use of Cash Collateral or in exercising any rights or remedies as and when permitted pursuant to this Interim Order or the DIP Documents, the DIP Agent, the DIP Lenders and the Prepetition Secured Parties shall not (i) be deemed to be in control of the operations of the Debtors, (ii) owe any fiduciary duty to the Debtors, their respective creditors, shareholders or estates or (iii) subject only to entry of the Final Order, be deemed to be acting as a “responsible person” or “owner or operator” with respect to the operation or management of the Debtors (as such terms, or any similar terms, are used in the United States Comprehensive Environmental Response, Compensation and Liability Act, 29 U.S.C. §§ 9601, et seq., as amended, or any similar federal or state statute).

25. ***No Impact on Certain Contracts or Transactions.*** No rights of any entity in connection with a contract or transaction of the kind listed in Bankruptcy Code sections 555, 556, 559, 560 or 561, whatever they might or might not be, are affected by the provisions of this Interim Order.

26. ***Exclusions.*** Nothing herein or in any of the DIP Documents shall operate as a release or waiver of, or a limit on expenditures in pursuit of, any claims or causes of action held or assertable by any party (including, without limitation, any of the Debtors or any other party in interest) against any Debtor, any “affiliate” of any Debtor (as defined in the Bankruptcy Code) or any officer, director or direct or indirect shareholder (or affiliate thereof) of any Debtor.

27. ***Release.*** Subject to entry of the Final Order, upon the date that each applicable portion of the DIP Financing shall be Paid in Full and prior to the release of the applicable DIP Liens, Debtors shall execute and deliver to the applicable DIP Agent and DIP Lenders a general

release of any and all claims and causes of action that could have been asserted or raised under or in connection with the ABL DIP Facility or Bayside DIP Facility, as applicable.

28. ***Effectiveness.*** This Interim Order shall constitute findings of fact and conclusions of law and shall take effect and be fully enforceable *nunc pro tunc* to the Petition Date immediately upon entry hereof. Notwithstanding Bankruptcy Rules 4001(a)(3), 6004(h), 6006(d), 7062 or 9024, any other Bankruptcy Rule or Rule 62(a) of the Federal Rules of Civil Procedure, this Interim Order shall be immediately effective and enforceable upon its entry and there shall be no stay of execution or effectiveness of this Interim Order.

29. ***Headings.*** Section headings used herein are for convenience only and are not to affect the construction of or to be taken into consideration in interpreting this Interim Order.

30. ***Final Hearing.*** The Final Hearing will be held by this Court on [\_\_\_\_], 2013 at [\_\_\_\_] (prevailing Eastern time). The Debtors shall promptly transmit copies of this Interim Order (which shall constitute adequate notice of the Final Hearing and the relief requested at such hearing, including with respect to the Bayside Roll Up DIP Loans) to the parties having been given notice of the Interim Hearing, to any party that has filed a request for notices with this Court and to any Committee, if appointed. Any party in interest objecting to the relief sought at the Final Hearing shall file a written objection, which shall be served upon (a) (i) Paul, Weiss, Rifkind, Wharton & Garrison LLP, Attn: Alan W. Kornberg, Jeffrey D. Saferstein and Elizabeth R. McColm, 1285 Avenue of the Americas, New York, NY 10019 and (ii) Young, Conaway, Stargatt & Taylor, LLP, Attn: Pauline K. Morgan and Joel Waite, Rodney Square, 1000 North King Street, Wilmington, DE 19801, attorneys for the Debtors; (b) (i) Akin Gump Strauss Hauer & Feld, LLP, Attn: Michael Stamer & Meredith Lahaie, One Bryant Park, New York, NY 10036 and (ii) Pepper Hamilton LLP, Attn: David Stratton & David Fournier,

Hercules Plaza, Suite 5100, 1313 N. Market Street, Wilmington, DE 19801, attorneys for the Prepetition Term Loan Agent, Prepetition Term Loan Lenders, Bayside DIP Agent and Bayside DIP Lenders, (c) (i) Goldberg Kohn, Attn: Randall Klein & Jeremy Downs, 55 East Monroe Street, Suite 3300, Chicago, IL 60603, and (ii) Richards, Layton and Finger, P.A., Attn: Paul Heath, One Rodney Square, 920 North King Street, Wilmington, DE 19801, each as attorneys for the Prepetition ABL Agent and ABL DIP Agent, (d) Baker & Mackenzie, Attn: Carmen Lonstein, 300 East Randolph Street, Suite 5000, Chicago, IL 60601, attorneys for the ad hoc group holders of convertible debentures, and (e) the U.S. Trustee, and shall be filed with the Clerk of the United States Bankruptcy Court, District of Delaware, in each case to allow actual receipt by the foregoing no later than [\_\_\_\_], 2013 at 4:00 p.m. (prevailing Eastern time).

Dated \_\_\_\_\_, 2013  
Wilmington, Delaware

\_\_\_\_\_  
The Honorable [\_\_\_\_\_]   
United States Bankruptcy Judge

**EXHIBIT G**

**Budget**

School Specialty Inc.  
DIP Summary

School Specialty Inc. DIP Budget

\$ Millions	Feb-13 Week 1	Feb-13 Week 2	Feb-13 Week 3	Feb-13 Week 4	Mar-13 Week 1	Mar-13 Week 2	Mar-13 Week 3	Mar-13 Week 4	Mar-13 Week 5	Apr-13 Week 1	Apr-13 Week 2	Apr-13 Week 3	Apr-13 Week 4
Week Ended	2/2	2/9	2/16	2/23	3/2	3/9	3/16	3/23	3/30	4/6	4/13	4/20	4/27
Receipts:													
Collections	\$ 7.4	\$ 7.2	\$ 7.7	\$ 8.2	\$ 9.1	\$ 9.0	\$ 8.5	\$ 7.3	\$ 9.7	\$ 9.2	\$ 7.3	\$ 9.1	\$ 10.8
Disbursements:													
Operating Disbursements													
Payroll	\$0.1	\$3.9	\$0.0	\$4.0	\$0.5	\$4.1	\$0.2	\$4.1	\$0.3	\$4.1	\$ 0.3	\$ 4.2	\$ 0.3
Rent	0.7	0.0	0.0	0.0	0.7	0.0	0.0	0.0	0.0	0.7	0.0	0.0	0.0
Taxes	0.1	0.0	0.2	0.2	0.0	0.0	0.0	0.3	0.0	0.0	0.3	0.3	0.0
AP Disbursement	18.5	12.0	8.0	7.4	9.0	9.7	8.2	8.2	8.4	9.8	10.4	10.4	10.4
Debtor Professionals Fees	0.0	0.0	0.0	0.0	0.0	0.0	1.2	0.0	0.0	0.0	0.0	1.2	2.4
Professional Fees for Unsecured Creditors	0.0	0.0	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.0	0.4	0.0
Restructuring/ Other Profess. Fees	0.0	0.0	0.0	0.0	0.0	0.0	1.0	0.0	0.0	0.0	0.0	1.0	10.2
Total Operating Disbursements	\$19.4	\$15.9	\$8.2	\$11.6	\$10.2	\$13.8	\$11.0	\$12.6	\$8.7	\$14.6	\$11.1	\$17.5	\$23.3
ABL Interest/ Fee	\$2.7	\$0.0	\$0.0	\$0.3	\$0.0	\$0.0	\$0.0	\$0.0	\$0.3	\$0.0	\$0.0	\$0.0	\$0.3
Term Loan Interest (1)	2.6	0.0	0.0	1.2	0.0	0.0	0.0	0.0	1.2	0.0	0.0	0.0	1.2
Term Loan DIP Interest/ Fees (1)	1.7	0.0	0.0	0.3	0.0	0.0	0.0	0.0	0.4	0.0	0.0	0.0	0.5
Convertible Notes Interest	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0	0.0
Total Disbursements	\$26.4	\$15.9	\$8.2	\$13.3	\$10.2	\$13.8	\$11.0	\$12.6	\$10.5	\$14.6	\$11.1	\$17.5	\$25.3
Net Cash Flows	(\$19.0)	(\$8.7)	(\$0.6)	(\$5.1)	(\$1.2)	(\$4.8)	(\$2.5)	(\$5.3)	(\$0.8)	(\$5.4)	(\$3.7)	(\$8.4)	(\$14.5)
Beginning Cash Balance	\$ -	\$ 4.4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
Net Cash Flows	(19.0)	(8.7)	(0.6)	(5.1)	(1.2)	(4.8)	(2.5)	(5.3)	(0.8)	(5.4)	(3.7)	(8.4)	(14.5)
Net Borrowings/(Paydowns)	23.4	4.2	0.6	5.1	1.2	4.8	2.5	5.3	0.8	5.4	3.7	8.4	14.5
Unrestricted Cash Balance	\$ 4.4	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -
ABL DIP Balance													
Projected ABL Availability	\$ 57.0	\$ 60.6	\$ 61.1	\$ 61.6	\$ 60.6	\$ 63.9	\$ 66.2	\$ 66.4	\$ 68.3	\$ 68.5	\$ 71.4	\$ 75.6	\$ 78.4
ABL Balance	43.6	52.0	55.6	56.1	56.6	55.6	58.9	61.2	61.4	62.3	63.5	66.4	70.6
Minimum Liquidity	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0	5.0
Excess/(Deficit) ABL Availability	\$8.4	\$3.6	\$0.5	\$0.4	(\$0.9)	\$3.3	\$2.2	\$0.2	\$1.9	\$1.3	\$2.8	\$4.2	\$2.8
Incremental ABL Funding/(Paydown)	\$ 8.4	\$ 3.6	\$ 0.5	\$ 0.4	\$ (0.9)	\$ 3.3	\$ 2.2	\$ 0.2	\$ 0.8	\$ 1.3	\$ 2.8	\$ 4.2	\$ 2.8
Funded ABL Debt Balance	52.0	55.6	56.1	56.6	55.6	58.9	61.2	61.4	62.3	63.5	66.4	70.6	73.4
Excess ABL availability after reserves and minimum liq	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ -	\$ 1.1	\$ -	\$ -	\$ -	\$ -
Term Loan DIP													
Funded Bayside DIP Balance	-	15.0	15.6	15.7	20.3	22.4	23.9	24.2	29.3	29.3	33.4	34.3	38.5
Incremental Bayside DIP Funding	15.0	0.6	0.0	4.6	2.1	1.5	0.2	5.1	-	4.2	0.9	4.2	11.7
Ending Funded Balance	\$ 15.0	\$ 15.6	\$ 15.7	\$ 20.3	\$ 22.4	\$ 23.9	\$ 24.2	\$ 29.3	\$ 29.3	\$ 33.4	\$ 34.3	\$ 38.5	\$ 50.2

Note

(1) Term Loan related interest and fees will be paid using funds from the Term Loan DIP