Docket #0495 Date Filed: 9/21/2012

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE NORTHERN DISTRICT OF ILLINOIS
EASTERN DIVISION

In re:	)	Chapter 11
	)	
HARTFORD COMPUTER HARDWARE, INC., *et al.*[1],	)	Case No. 11-49744 (PSH)
	)	(Jointly Administered)
	)	
Debtors.	)	Hon. Pamela S. Hollis

MEMORANDUM OF LAW IN SUPPORT OF JOINT PLAN OF LIQUIDATION OF THE DEBTORS AND THE CREDITORS' COMMITTEE

Dated: September 21, 2012

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[1] The Debtors are Hartford Computer Hardware, Inc. (FEIN 27-4297525), Old NS, LLC f/k/a Nexicore Services, LLC (FEIN 03-0489686), Hartford Computer Group, Inc. (FEIN 36-2973523), and Hartford Computer Government, Inc. (FEIN 20-0845960).

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The above-captioned debtors and debtors in possession (collectively, the "Debtors") file this memorandum of law (the "Memorandum") in support of confirmation of the Joint Plan of Liquidation of the Debtors and the Creditors' Committee [Docket No. 399] (the "Plan").[1]

In support of confirmation of the Plan and in reply to the objections to the Plan filed by Sony Electronics, Inc., including its Sony Service Company division ("Sony") and ARG Investments ("ARG"), Enable Systems, Inc. ("Enable"), MRR Venture LLC ("MRR"), SKM Equity Fund II, L.P. ("SKM Equity"), and SKM Investment Fund II "SKM Investment" and together with ARG, Enable, MRR, and SKM Equity, the "MRR Group"), the Debtors submit the Declarations in Support of the Plan of Steven Nerger (the "Nerger Declaration"), Peter Kravitz (the "Kravitz Declaration") and Michael Schwarzmann (the "Schwarzmann Declaration"), which will be filed before the hearing and are incorporated by reference herein, and respectfully represent as follows.

I. PRELIMINARY STATEMENT.

1. The Plan embodies the settlement agreement reached among the Debtors, the Official Committee of Unsecured Creditors of the Debtors (the "Committee"), and the Debtors' senior secured creditor, Delaware Street. The Plan is the final step towards winding up the affairs of the Debtors and transferring essentially all of their remaining assets to a liquidating trust for the benefit of unsecured creditors. Pursuant to the terms of the Plan, Delaware Street has agreed to contribute funds to the trust and waive millions of dollars in deficiency claims so that a distribution can be made to the Debtors' unsecured creditors and release its liens on the Debtors' assets in an amount to pay allowed administrative and priority claims in full.

[1] All capitalized terms used herein shall have the meaning set forth in the Plan unless otherwise so stated.

2. These contributions from Delaware Street are essential to the Plan's feasibility, and without them it is highly unlikely the Debtors' unsecured creditors would receive any distribution from the Debtors. The Debtors and the Committee believe that the Plan achieves a prompt and cost-effective distribution of the remaining assets of the Debtors' Estates that meets the statutory requirements for confirmation and maximizes value for administrative, priority and general unsecured creditors that simply would not have been available otherwise.

3. The Debtors and the Committee further believe that the proposed liquidation of the Debtors' Estates pursuant to Chapter 11 as proposed in the Plan will avoid unnecessary delay and additional costs that would be incurred if these cases were converted to Chapter 7.

4. The Debtors received overwhelming acceptance of the Plan. Indeed, the Plan was accepted by both voting classes: 100% in number and dollar amount of Class I Secured Claims – Delaware Street and 96.34% in number and 99.95% in dollar amount of Class III General Unsecured Creditors. The MRR Group and Sony filed the only objections to the Plan. The MRR Group is classified in a non-voting class deemed to have rejected the Plan and is comprised of shareholders of the Debtors, one of whom is also a creditor under a pre-petition subordination agreement. As addressed below, the MRR Group's objection is without merit and should be overruled. Sony's objection has been resolved as set forth below.

5. The Debtors and the Committee believe, as evidenced by the Plan formulation process and the Plan voting results, that the Plan is in the best interests of the Debtors' Estates, creditors and other stakeholders. Notwithstanding the overwhelming acceptance of the Plan, the Debtors recognize their obligation under the Bankruptcy Code to demonstrate by a preponderance of the evidence that the Plan satisfies all requirements of 11 U.S.C. § 1129.

6. This brief describes the background of these cases and provides a summary of the key terms of the Plan, demonstrates how the Plan satisfies 11 U.S.C. § 1129 and addresses the objections to confirmation.

7. The Debtors and the Committee submit that this brief, its supporting declarations and exhibits, together with any additional evidence to be adduced at the Confirmation Hearing, demonstrate that the Plan satisfies all of the requisite elements of 11 U.S.C. §§ 1122, 1123 and 1129 and, therefore, the Plan should be confirmed.

II. BACKGROUND AND HIGHLIGHTS OF THE PLAN.

A. Background and Events Leading Up to the Commencement of These Cases.

8. A complete factual background regarding the Debtors, including their business operations, their capital and debt structure, and the events leading to the filing of these bankruptcy cases, is set forth in detail in the Disclosure Statement. A summary is set forth below.

i. Business Overview.

9. The Debtors consist of: Hartford Computer Group, Inc., a Delaware corporation ("Hartford Group"), Hartford Computer Hardware, Inc., an Illinois corporation ("Hardware"), Hartford Computer Government, Inc., an Illinois corporation ("HCGovernment"), and Old NS, LLC f/k/a Nexicore Services, LLC, a Delaware limited liability company ("Nexicore"). Hartford Group is the parent company and owns 100% of the outstanding equity interests of Hardware and Nexicore. Hardware owns 100% of the outstanding equity interests of HCGovernment. The Debtors were one of the leading providers of repair and installation services in North America for consumer electronics and computers. The Debtors operated in three complementary business lines: (i) parts distribution and repair; (ii) depot repair; and (iii) onsite repair and installation.

Products serviced include laptop and desktop computers, commercial computer systems, flat-screen television, consumer gaming units, printers, interactive whiteboards, peripherals, servers, POS devices, and other electronic devices. The Debtors also engaged in hardware sales.

10. The Debtors operated out of five locations: (i) Schaumberg, Illinois; (ii) Simi Valley, California; (iii) Tampa, Florida; (iv) Columbia, Maryland; and (v) Markham, Ontario, Canada. As of June 2011, the Debtors employed approximately 486 employees, including approximately 250 employees in California and 113 employees in Canada. The Debtors' senior management had almost 70 years of experience with the Debtors and included Brian Mittman, president and chief executive officer, Ron Brinckerhoff, vice president of sales, Randy Hodgson, vice president of onsite operations, Rich Levin, vice president of procurement, Jo Lamoreaux, chief financial officer, John Nelson, general manager in Canada, and Greg McDonald, vice president of depot operations.

ii. Events Leading to the Chapter 11 Filings.

11. Effective as of May 9, 2005, the Debtors entered into that certain Master Restructuring Agreement (the "Restructuring Agreement") with Delaware Street, the MRR Group, HCG Financial Services, Inc. (the "Financial PO Lender"), and Enable Systems, Inc. Pursuant to the Restructuring Agreement, the Debtors amended and restructured their obligations to various stakeholders as well as their equity ownership. Specifically, after the execution and effectiveness of the Restructuring Agreement, the Debtors' long-term, secured debt was as follows: (a) pursuant to that certain Amended and Restated Loan and Security Agreement dated as of December 17, 2004, among the Debtors and Delaware Street, various promissory notes and other documents (collectively, as may have been amended, supplemented, and modified, the ("Senior Credit Agreement"), the Debtors were indebted to Delaware Street, as of the Petition

Date, in the aggregate amount of $70,573,615 (the "Senior Credit Facility"); (b) pursuant to that certain Substituted and Amended Subordinated Promissory Note dated May 9, 2005, made by Hartford Group in favor of MRR, Hartford Group was indebted to MRR in the approximate amount of $1,166,388.89; (c) pursuant to that certain Subordinated Promissory Note dated as of May 9, 2005, made by Hartford Group in favor of the Financial PO Lender, Hartford Group was indebted to the Financial PO Lender in the initial principal balance of $869,000.00; and (d) pursuant to that certain Revolving Credit Agreement by and between IBM Credit LLC ("IBM"), Hardware and HCGovernment, dated as of May 5, 2005 (the "IBM Credit Agreement"), Hardware and HCGovernment were indebted to IBM in the amount of $1,030,545.00. Prior to the Petition Date on December 9, 2011, the IBM Credit Agreement, which was fully collateralized, was paid off in full through the use of cash collateral from the letter of credit that secured the facility.

12. As a result of the Restructuring Agreement, MRR and the Financial PO Lender also became holders of certain classes of preferred and common equity interests in Hartford Group, which is the sole shareholder and member of Hardware and Nexicore, respectively. The remaining equity interest holders of Hartford Group include Delaware Street and Brian Mittman. As set forth above, Hardware is the sole shareholder of HCGovernment.

13. The documents evidencing and supporting the Financial PO Lender's and the MRR Group's claims contain subordination provisions that provide, among other things, that the Debtors shall not make any distributions on account of those claims unless and until the Pre-petition Obligations owing to Delaware Street are paid in full. *See* Subordinated Promissory Note dated 5/9/2005 between the Financial PO Lender and the Debtors, a copy of which is attached hereto as Exhibit A and the Intercreditor Agreement dated 12/17/04 between the

Debtors, MRR and Delaware Street, and the Reaffirmation Agreement dated 5/9/2005, copies of which are attached hereto as Group Exhibit B.

14. For the five years prior to the Petition Date, the Debtors implemented various turnaround initiatives focused on creating an efficient operation capable of delivering high quality service. With the operational turnaround largely complete, the Debtors were achieving significant momentum in each of their business lines. During that period, the companies' total revenues had grown from $55.1 million in 2006 to $95.1 million and their earnings had increased at an even larger degree.

15. Given the Debtors' pre-petition performance, as well as its capital structure, the Debtors commenced an aggressive marketing and sales effort so as to take advantage of their improvements for the benefit of all their creditors. The Debtors, with the assistance of their advisors, actively marketed the company beginning in late January 2011, focusing on a sale of substantially all of their assets as a going concern. The Debtors conducted a well-orchestrated sale process targeting the company's universe of potential strategic and financial buyers in an effort to maximize the value of the Debtors' assets.

16. At the outset of this process, the Debtors determined, in consultation with their advisors, to focus their sale efforts on locating a stalking horse bidder for substantially all of their assets. The Debtors believed that their businesses and assets had little value if liquidated separately (with the exception of Hardware and HCGovernment, which together constitute a discrete business unrelated to the other Debtors), and that a sale of substantially all of the assets of Hartford Group and Nexicore (the "Acquired Assets") as a going concern would maximize value to the estates.

17. As a result of the sale process, Avnet, Inc. and Avnet International (Canada) Ltd. (together, the "Purchaser") executed an Asset Purchase Agreement (the "Agreement"), pursuant to which, among other things, the Purchaser agreed to purchase, subject to higher and better bids and an order from the Bankruptcy Court, substantially all of the assets of Hartford Group and Nexicore. The purchase price under the Agreement consisted of an initial cash payment of $35.5 million, subject to a working capital adjustment, plus a potential earnout, subject to certain adjustments described more fully below, plus the assumption of certain liabilities, including certain cure costs and certain post-petition administrative expenses.

18. The Agreement contemplated Chapter 11 filings by the Debtors and the approval of the Agreement through Bankruptcy Court-supervised sale process and auction pursuant to section 363 of the Bankruptcy Code. As of the Petition Date, the Purchaser's bid was the highest and best that the Debtors had received. As a result, as soon as practicable after the execution of the Agreement, the Debtors commenced these Chapter 11 cases and a sale process.

19. As of December 1, 2011, the obligations owing under the Senior Credit Facility, not including fees or interest, included:

- Revolver: $9,076,302 (the "Pre-petition Revolving Debt");
- Term Loan A: $27,482,409;
- Term Loan B: $12,660,490;
- Term Loan C: $5,748,432;
- Term Loan D: $6,965,575; and
- Term Loan E: $8,640,407 (collectively, the "Pre-petition Term Debt").

B. Administration of the Chapter 11 Cases.

20. In addition to the typical first-day motions filed at the outset of any major bankruptcy case, which are described in greater detail in the Disclosure Statement, the Debtors also sought authority to obtain debtor-in-possession financing.

21. On the Petition Date, the Debtors filed their Motion for Interim and Final Orders (i) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364, (ii) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363, (iii) Granting Adequate Protection to the Pre-petition Senior Lender Pursuant to 11 U.S.C. §§ 361 and 363 and (iv) Scheduling a Final Hearing Pursuant to Bankruptcy Rule 4001, pursuant to which, among other things, the Debtors sought authority to borrow money from Delaware Street to fund their working capital needs in these Chapter 11 cases.

22. Despite efforts to find alternative and more borrower-friendly financing, the Debtors were unable to find any financing sources willing to compete with Delaware Street in connection with providing the Debtors with their necessary working capital needs. As a result, in order to promote the sale of the Debtors assets while at the same time providing liquidity sufficient to fund day-to-day cash needs, pursuant to a budget, the Bankruptcy Court entered interim [Docket No. 66] and final orders [Docket No. 137] authorizing the debtor-in-possession financing from Delaware Street. Specifically, those orders provided for a $14.4 million facility, $2.75 million of which could be borrowed prior to the entry of the final order, secured by all of the Debtors' pre- and post-petition assets by superpriority, priming, senior liens pursuant to section 364(c)(1) of the Bankruptcy Code, as well as granting adequate protection liens and claims to Delaware Street, as the Debtors' pre-petition lender pursuant to sections 361(a) and 363(c) of the Bankruptcy Code. Among other things, the final order provided for the Debtors to apply proceeds received from pre-petition collateral to the Pre-petition Revolving Debt and reborrow such amounts as post-petition debtor in possession financing. Pursuant to the Sale Order (described below), upon the closing of the transactions approved by the Sale Order, the

Debtors were required to remit a portion of the proceeds of the Sale sufficient to repay the debtor-in-possession loan.

23. On April 2, 2012, Delaware Street sent a notice to the Debtors and the Creditors' Committee that the debtor-in-possession obligations totaled $12,182,664, consisting of $12,076,302 of principal and $106,362 of interest. These sums included funds borrowed to replace working capital used to repay the $9,076,302 in Pre-petition Revolving Debt. On April 6, 2012, the Debtors paid $12,182,644 to Delaware Street in full satisfaction of Delaware Street's DIP Loan claims.

C. Sale of the Debtors' Assets.

24. On the Petition Date, the Debtors filed a Motion Pursuant to 11 U.S.C. §§ 105(a), 363, 365 and Fed. R. Bankr. P. 2002, 6004, 6006 for (i) Entry of an Order (a) Approving Bidding Procedures; (b) Granting Certain Bid Protections; (c) Approving Form and Manner of Sale Notices; (d) Setting Sale Hearing Date In Connection With Sale of Substantially All of Debtors' Assets; and (ii) Entry of an Order (a) Approving the Sale of Debtors' Assets Free And Clear of All Liens, Claims, Encumbrances and Interests; (b) Authorizing the Assumption and Assignment of Certain Executory Contracts and Unexpired Leases; (c) the Assumption of Certain Liabilities; and (d) Granting Certain Related Relief [Docket No. 33].

25. On January 26, 2012, the Bankruptcy Court entered an order approving the bidding procedures and setting a sale hearing [Docket No. 128]. The Debtors thereafter conducted a sale process at the conclusion of which, the Purchaser's bid for the Debtors' assets was both highest and best. The Debtors filed pleadings with the Bankruptcy Court setting forth the executory contracts and unexpired leases that the Debtors intended to assume and assign to the Purchaser [Docket Nos. 152 and 214]. On February 28, 2012, the Bankruptcy Court entered

an order approving the sale of the assets to the Purchaser [Docket No. 208]. The sale transaction closed effective 11:59 p.m. on April 2, 2012. The Debtors also filed a motion to reject all contracts that were not assumed and assigned to the Purchaser [Docket No. 236]. The motion was granted by the entry of the Order Authorizing the Rejection of Certain Executory Contracts and Unexpired Leases on April 12, 2012 [Docket No. 262].

26. Pursuant to the APA, the purchase price due and payable at closing was $35,500,000 in cash. The purchase price is subject to a post-closing working capital adjustment, potential tax refunds and an Earnout. Following the closing of the sale, the Debtors and the Purchaser agreed to a working capital adjustment in the amount of $2,604,274.

27. The increase to the purchase price as a result of the working capital adjustment will be paid to the Debtors from the Wells Fargo Escrow established on the closing of the sale.

28. The Debtors also established an escrow with the Purchaser's Canadian counsel, Fraser Milner Casgrain (the "Canadian Tax Escrow"). A total of five million Canadian dollars of the purchase price under the APA were deposited in the Canadian Tax Escrow. Under Canadian law, when a non-Canadian sells assets in Canada, the seller is required to obtain and deliver to the buyer a certificate of compliance issued by the Minister of National Revenue (Canada) under subsections 116(2) and 116(5.2) of the Income Tax Act (Canada), in each case with a certificate limit in an amount not less than the Canadian dollar equivalent of the portion of the purchase price allocated to the applicable Canadian assets being sold (the "116 Certificate"). Under Canadian law, a buyer of Canadian assets from a non-Canadian seller may liable for certain Canadian taxes arising from the sale and that amount is reflected on the 116 Certificate.

29. As of the filing of the this memorandum, the Debtors have not received the 116 Certificate from the Canadian taxing authorities. Following the receipt of the 116 Certificate,

which is expected shortly, an amount equal to the certificate limit (*i.e.*, the anticipated tax owing by the Debtors) will be remitted from the Canadian Tax Escrow to the Canadian taxing authorities. Any funds remaining in the Canadian Tax Escrow will be remitted to the Debtors. While the Debtors expect that a substantial portion of the Canadian Tax Escrow will be remitted back to the Debtors, the Debtors cannot predict what the final outcome might be. In addition, the Debtors expect that any Canadian taxes required to be paid will be recoverable as a refund after the Debtors file their Canadian tax returns for 2012.

30. Pursuant to section 3.5 of the APA, the Debtors may be entitled to an Earnout as an addition to the purchase price. The Earnout shall be calculated using the operating income in 2012 and 2013 derived from the acquisition of the acquired assets under the Avnet Transaction, less certain costs and offsets, all of which are more fully set forth in the APA. The Earnout is payable, if at all, approximately four months following the end of the year in which the operating income is measured (*e.g.*, the Earnout based on 2012's operating income would be payable in approximately April of 2013). The APA sets forth the manner in which the proposed Earnout amount is to be calculated, conveyed by the Purchaser to the Debtors, and challenged by the Debtors, if necessary. Pursuant to the section 3.5(c) of the APA, the Earnout has a maximum cap for each year in which an Earnout would be calculated. Though the Debtors expect the Earnout will be collected in both 2013 and 2014, the Debtors cannot predict what the final outcome might be.

D. <u>Shareholder Suit</u>.

31. Prior to the Petition Date, the MRR Group filed the Shareholder Suit, a lawsuit in Delaware state court, against Delaware Street, certain of its officers, Hartford Group and certain

of its directors seeking, *inter alia*, to challenge Delaware Street's claims in these Chapter 11 cases.

32. The primary allegations contained in the Shareholder Suit against Delaware Street, its principals, and certain of the Debtors' directors (the "Shareholder Suit Claims") were that Delaware Street and its principals: (i) devised a plan to withhold principal and interest payments of its debt in order to drive the Debtors into bankruptcy and recoup its initial investment and approximately $35 million in interest while depriving lesser priority claimants and equity interest holders from any recoveries; and (ii) breached their fiduciary duties by not attempting to pay down, renegotiate, or refinance the Delaware Street debt despite the high interest rates being charged and the favorable investment climate for refinancing loans between 2006 and 2008.

33. The Shareholder Suit was stayed by the Debtors' bankruptcy filing. On March 9, 2012, the Debtors removed the state court lawsuit to the United States District Court for the District of Delaware and filed a motion to transfer venue to the Bankruptcy Court. The motion was granted and the case was transferred to the United States District Court for Northern District of Illinois. The District Court thereafter referred the case to this Court. As set forth below, pursuant to the Committee/Delaware Street Settlement, the claims set forth in the Shareholder Suit will be deemed settled, released and dismissed with prejudice as of the Effective Date of the Plan.

E. The Delaware Street Settlement.

i. Investigation by the Committee.

34. Pursuant to the final debtor-in-possession financing order, all parties, including the Committee, were granted until June 11, 2012, to investigate the pre-petition liens and claims

of Delaware Street (the "Delaware Street Liens/Claims") as well as potential claims of the Debtors against Delaware Street (the "Debtors' Delaware Street Claims" and together with the Delaware Street Liens/Claims, the "Delaware Street Claims"). As will be described in more detail in the Kravitz and Schwarzman Declarations, the Committee and its legal and financial professionals commenced an extensive investigation into and analysis of potential challenges to the Delaware Street Liens/Claims, and potential claims against Delaware Street, including those claims asserted in the Shareholder Suit.

35. While the Committee identified what it regards as colorable claims to attack the Delaware Street Liens/Claims, the Committee recognized that pursuing those would have been fact intensive, expensive, and time consuming, with no certainty of success. Moreover, under varying assumptions of potential litigation outcomes, the Committee concluded that even a significant degree of litigation success by the Committee risked leaving little if anything from the sale proceeds available to general unsecured creditors.

ii. The Settlement.

36. As a result of the Committee's extensive investigation and analysis, the Committee and the Debtors determined a settlement was in the best interests of the Debtors' estates. On May 8, 2012, the Committee's chairman, Peter Kravitz, and the Committee's professionals met with representatives of Delaware Street and the Debtors to discuss the Committee's analysis of its potential causes of action and the possibility of settlement. After lengthy discussion among the parties about the perceived strengths and weaknesses of potential derivative actions against Delaware Street and its principals and the range of possible litigation outcomes, the Committee, Delaware Street and the Debtors reached agreement on the key terms of the settlement that is incorporated into the Plan.

37. The key terms of this settlement are as follows:

(i) Delaware Street's consent to the Debtors' use of its cash collateral pursuant to a budget and a form of cash collateral order, both in form and substance acceptable to Delaware Street, necessary for the Debtors and the Committee to file, confirm and consummate the Plan.

(ii) On and subject to the Effective Date of the Plan, Delaware Street's carve out from its liens the Settlement Sum for the benefit of all General Unsecured Creditors holding Allowed Unsecured Claims as follows: (a) cash in the sum of $333,000; (b) the first dollars of any Earnout payable to the Debtors by the Purchaser for the calendar year ending December 31, 2012, in an amount not exceeding $450,000; and (c) the first dollars of any Earnout payable to the Debtors by the Purchaser for the calendar year ending December 31, 2013, in an amount not exceeding $667,000 less any amount recovered by the General Unsecured Creditors under subpart (b) hereof. The Settlement Sum shall fund the Hartford Liquidating Trust. The assets of the Hartford Liquidating Trust will be used to fund Distributions to the General Unsecured Creditors. Delaware Street shall waive its share of the General Unsecured Claims entitled to payment from the Hartford Trust Assets.

(iii) Delaware Street's consent to the use of its cash collateral in an amount necessary to pay all Administrative Expense Claims, Priority Tax Claims, and Priority Wage Claims, in an amount set forth in the Cash Collateral Budget plus up to an additional $300,000.

(iv) Subject to the Settlement Sum, all rights to collect any Earnouts payable by the Purchaser shall be assigned to Delaware Street on the Effective Date.

(v) The claims set forth in the Shareholder Suit shall be deemed settled, released, and dismissed with prejudice as of the Effective Date and all other claims of the Debtors against Delaware Street shall be deemed released as of the Effective Date.

(vi) Delaware Street will waive any deficiency claim and will not participate in any distributions to General Unsecured Creditors.

(v) All parties-in-interest will be permanently enjoined from prosecuting any claims relating to the Debtors against Delaware Street. The DSC Assigned Causes of Action, which include claims against directors, officers, employees and agents of the Debtors (including Avoidance Actions) will be assigned to Delaware Street, and Delaware Street shall have exclusive standing to pursue such claims; provided, however, that if and to the extent that a director or officer of the Debtors files a

> non-administrative, non-priority claim against the Debtors which, if allowed, would be a General Unsecured Creditor, the Hartford Liquidating Trust may bring an avoidance action against such director or officer solely for purposes of offsetting against the amount of such non-administrative, non-priority claim, but may not seek affirmative recovery from such director or officer.

F. Approval of the Disclosure Statement and the Solicitation Process.

38. Following the settlement, the Debtors and the Committee filed a Disclosure Statement [Docket No. 429] (the "Disclosure Statement") and Joint Plan of Liquidation of the Debtors and the Committee [Docket No. 399] (the "Plan"). On August 10, 2012, the Bankruptcy Court approved the Disclosure Statement [Docket No. 434] (the "Disclosure Statement") and granted the Debtors' Motion for Entry of an Order (i) Approving the Adequacy of the Disclosure Statement; (ii) Establishing Procedures for Solicitation and Tabulation of Votes To Accept or Reject the Plan; (iii) Fixing the Bar Date For Professional Fee Claims; (iv) Fixing the Date, Time and Place For Confirmation Hearing; and (v) Establishing Procedures For Rejection Claims [Docket No. 434] (the "Solicitation/Disclosure Statement Order") in connection therewith.

G. Overview of the Plan.

39. The Plan is the result of a collaborative process among the Debtors, the Committee, and Delaware Street. As discussed above, the Debtors have sold substantially all of their assets and need to liquidate the remaining assets of their Estates. The Debtors have determined that stakeholders will recover more from a liquidation pursuant to Chapter 11 of the Bankruptcy Code than a liquidation pursuant to Chapter 7 of the Bankruptcy Code. The Plan accomplishes these goals.

40. The Plan provides for (i) the satisfaction of the Senior Credit Facility through Delaware Street's agreement to accept partial payment on its secured claims and waive any distribution on its deficiency claim; (ii) Delaware Street's substantial contributions to the estate

by permitting the use of its cash collateral to pay all Allowed Administrative and Priority Claims and by providing funds for distribution to General Unsecured Creditors; (iii) the transfer of all of the Hartford Trust Assets to the Hartford Liquidating Trust; and (iv) the distribution of the Hartford Liquidating Trust's assets for payment of Allowed General Unsecured Claims. In addition, the Plan provides for the termination of all Interests in, and the substantive consolidation of, the Debtors.

41. Consistent with the settlement with Delaware Street, the Plan also provides for a broad release to Delaware Street to be given by the Debtors, the Committee and all of the Debtors' creditors. The release is provided as consideration for Delaware Street's provision of (i) the Settlement Sum; (ii) the Cash Collateral sufficient to satisfy Administrative Claims, Priority Tax Claims, and Priority Wage Claims; and (iii) Delaware Street's waiver of its deficiency claim. These provisions by Delaware Street were critical to the Debtors' ability to propose a feasible plan that provides a return to General Unsecured Creditors.

42. The Debtors believe that the Plan achieves their ultimate goal of maximizing recoveries to all stakeholders on a fair and equitable basis as quickly as is reasonably practicable.

H. <u>Acceptance of Plan</u>.

43. As described above, the Plan is the result of extensive negotiations among the Debtors, Delaware Street, and the Committee. As indicated in the Declaration of P. Joseph Morrow IV with Respect to the Tabulation of Votes on the Plan [Docket No. 486], and illustrated in the table below, the Holders of Claims in Class I and Class III (the only Voting Classes) overwhelmingly voted in favor of the Plan.

Plan Class	Percentage of Number Voting to Accept Plan	Percentage of Number Voting to Reject Plan	Percentage of Dollar Amount Voting to Accept Plan	Percentage of Dollar Amount Voting to Reject Plan
Class I: Secured Claims – Delaware Street	100%	0%	100%	0%
Class III: Allowed General Unsecured Claims	96.34%	3.66%	99.95%	0.05%

44. Such support reflects the success of the sale of the Debtors' assets and the fair and equitable nature of the settlement between the Debtors, the Committee and Delaware Street.

III. THE PLAN MEETS THE REQUIREMENTS FOR CONFIRMATION UNDER SECTION 1129 OF THE BANKRUPTCY CODE.

45. To confirm the Plan, the Bankruptcy Court must find by a preponderance of the evidence that both the Plan and the Debtors are in compliance with each of the requirements of section 1129(a) of the Bankruptcy Code. *See In re Am. Consol. Transp. Cos., Inc.*, 470 B.R. 478, 486 (Bankr. N.D. Ill. 2012) (the debtor must demonstrate by a preponderance of the evidence that it meets all section 1129 requirements). Further, the Bankruptcy Court may confirm a Chapter 11 plan if all of the requirements of subsection 1129(a) are met, with the exception of subsection (a)(8), and the requirements of section 1129(b) of the Bankruptcy Code are satisfied. *Id*. As set forth below, the Plan should be confirmed because the Debtors meet the requirements of sections 1129(a) and (b) of the Bankruptcy Code.

A. The Plan Complies with Section 1129(a)(1) of the Bankruptcy Code.

46. Section 1129(a)(1) of the Bankruptcy Code requires that a plan comply with the "applicable provisions" of the Bankruptcy Code. 11 U.S.C. § 1129(a)(1). The legislative history of section 1129(a)(1) explains that this provision encompasses the requirements of sections 1122 and 1123 of the Bankruptcy Code, which govern classification of claims and interests and the

contents of the plan, respectively. *See* S. Rep. No. 95-989, at 126 (1978), *reprinted in* 1978 U.S.C.C.A.N. 5787, 5912; H.R. Rep. No. 95-595, at 412 (1977), *reprinted in* 1978 U.S.C.C.A.N. 5963, 6368; *see also In re Multuit Corp.*, 449 B.R. 323, 333 (Bankr. N.D. Ill. 2011) (stating that the Bankruptcy Code does not define the phrase "applicable provisions," however, it is aimed at compliance with 11 U.S.C. §§ 1122 and 1123) and *In re Mirant Corp.*, 2007 WL 1258932, at *7 (Bankr. N.D. Tex. Apr. 27, 2007) (finding that the objective of section 1129(a)(1) is to ensure compliance with the Bankruptcy Code provisions regarding classification of claims or interests and plan contents). Accordingly, the determination of whether the Plan complies with section 1129(a)(1) requires an analysis of sections 1122 and 1123 of the Bankruptcy Code. As explained below, the Plan complies with sections 1122 and 1123 in all respects.

i. Classification of Claims and Interests (Section 1122).

47. The Plan satisfies section 1122, which provides that "a plan may place a claim or an interest in a particular class only if such claim or interest is substantially similar to the other claims or interests of such class." 11 U.S.C. § 1122(a). Courts in this Circuit and elsewhere have recognized that, under section 1122 of the Bankruptcy Code, plan proponents have significant flexibility in placing claims into different classes under section 1122, provided there is a rational legal or factual basis to do so and all claims or interests within a particular class are substantially similar. *See, e.g.*, *Multuit*, 449 B.R. at 333 (holding that section 1122 provides the proponent of a plan discretion in classifying claims so long as it does not classify dissimilar claims in the same class); *In re Bloomingdale Partners*, 170 B.R. 984, 996 (Bankr. N.D. Ill. 1994); *In re Wabash Valley Power Ass'n, Inc.*, 72 F.3d 1305, 1321 (7th Cir. 1995).

48. Article III of the Plan provides for the separate classification of Claims and Interests with respect to the Debtors based upon differences in the legal nature or priority of such

Claims and Interests. Aside from Administrative Claims, Priority Tax Claims and Priority Wage Claims, which are not required to be classified, the Claims against and Interests in the Debtors have been assigned to separate numbered Classes, as detailed in the chart below, based on the type of Claim or Interest involved.

49. The Plan's classification of Claims against and Interests in the Debtors is as follows:

Class	Claim	Status	Voting Rights
I	Secured Claims – Delaware Street	Impaired	Entitled to Vote
II	Subordinated Secured Claims	Impaired	Not entitled to vote/deemed to reject Plan
III	Allowed General Unsecured Claims	Impaired	Entitled to Vote
IV	Equity Interests	Impaired	Not entitled to vote/deemed to reject Plan

50. In part, the Plan's classification scheme follows the Debtors' capital structure, with secured debt classified separately from unsecured debt and Interests classified separately from Claims. Likewise, other aspects of the classification scheme are reasonably related to the different legal or factual nature of each type of Claim. For example, Class II Subordinated Secured Claims are classified separately from the Class I Secured Claims – Delaware Street because the Class II claims are subject to a contractual subordination agreements providing that any payment to the Class II creditors be subordinate to payments to the Class I creditors. *See, e.g., Multuit,* 449 B.R. at 334 (stating "the emphasis is not upon the holder of the claim so much as it is upon what type of claim the holder has against the estate.") (citing *In re Sentinel Mgmt. Group, Inc.*, 398 B.R. 281, 298 (Bankr. N.D. Ill. 2008) and *In re Coram Healthcare Corp.,* 315 B.R. 321, 349 (Bankr. D. Del. 2004)). By recognizing the differing legal and

equitable rights of the Holders of Claims and Interests, the Debtors proposed a classification scheme that fits well within the flexible standard of section 1122 of the Bankruptcy Code.

51. The Claims or Interests within a particular Class are substantially similar to the other Claims or Interests in that Class. The treatment of each Claim or Interest within a Class is the same as the treatment of each other Claim or Interest in such Class, unless the Holder of a Claim or Interest agrees to less favorable treatment on account of its Claim or Interest. Moreover, valid business, factual and legal reasons exist for separately classifying the various Classes of Claims and Interests under the Plan. Thus, the Plan satisfies section 1122 and 1123(a)(1) of the Bankruptcy Code.

52. The MRR Group's objection to the Plan asserts that the claims of MRR and the Financial PO Lender (who has neither asserted or joined in any objections to the Plan or its treatment thereunder) are improperly classified. The MRR Group argues that the claims of MRR and the Financial PO Lender should be classified with other general unsecured claims in Class III.

53. The MRR Group's objection fails for several reasons. MRR and the Financial PO Lender are parties to subordination agreements with the Debtors and Delaware Street wherein MRR and the Financial PO Lender agreed that their claims would be subordinate to those of Delaware Street until Delaware Street is paid in full. Delaware Street is not being paid in full under the Plan and therefore, neither MRR nor the Financial PO Lender are entitled to any payments under the Plan.

54. MRR argues it should be included in Class III as an unsecured creditor. However, by entering into the subordination agreement, MRR made its claim legally different from the other unsubordinated general unsecured creditors. The general unsecured creditors are only

receiving a distribution in this case as a settlement from Delaware Street. Given MRR's position in these cases, classifying it in any other way than as separate from the general unsecured creditors would be legally improper.

55. In an attempt to skirt around its subordination agreement, the MRR Group asserts in its objection to the Plan that the subordination agreement is unenforceable due to Delaware Street's "inequitable conduct." Not surprisingly, the MRR Group fails to cite any legal or factual basis for this argument and simply says that it will be demonstrated at the confirmation hearing. The MRR Group clearly fails to assert any sustainable objection to the Plan.

56. And, while not essential to this Court overruling the MRR Group's objection, it is also notable that the MRR Group's argument is the exact opposite of the argument made by the MRR Group in opposition to approval of the Disclosure Statement. In its Objection to the Disclosure Statement [Doc. No. 384] (the "DS Objection"), the MRR Group argued that the claims of the Financial PO Lender and MRR "cannot be included in the same class because the [Financial PO Lender's] Claim is unsecured, and the MRR Claim is secured." DS Objection ¶ 25.

ii. Mandatory Contents of the Plan.

57. Section 1123(a) of the Bankruptcy Code identifies seven requirements for the contents of a company's plan of reorganization. Specifically, this section requires that a plan: (i) designate classes of claims and interests; (ii) specify unimpaired classes of claims and interests; (iii) specify treatment of impaired classes of claims and interests; (iv) provide for equality of treatment within each class; (v) provide adequate means for the plan's implementation; (vi) provide for the prohibition of nonvoting equity securities and provide an appropriate distribution of voting power among the classes of securities; and (vii) contain only

provisions that are consistent with the interests of the debtors' creditors and equity security holders and with public policy with respect to the manner of selection of the reorganized company's officers and directors. *See* 11 U.S.C. § 1123(a). The Plan fully complies with each requirement of section 1123(a).

58. First, as previously noted with respect to the Plan's compliance with section 1122, Article III of the Plan designates Classes of Claims and Interests, as required by section 1123(a)(1) of the Bankruptcy Code. As set forth below, the Plan also complies with sections 1123(a)(2)-(7) of the Bankruptcy Code.

59. Second, section 1123(a)(2) of the Bankruptcy Code requires that the Plan "specify any class of claims or interests that is not impaired under the plan." 11 U.S.C. § 1123(a)(2). Administrative Claims, Priority Tax Claims and Priority Wage Claims are unimpaired as set forth in sections 3.4, 3.5 and 3.6 of the Plan. Therefore, section 1123(a)(2) of the Bankruptcy Code is satisfied.

60. Third, section 1123(a)(3) of the Bankruptcy Code requires that the Plan "specify the treatment of any class of claims or interests that is impaired under the plan." 11 U.S.C. § 1123(a)(3). The Plan designates Classes I through IV as Impaired. Sections 3.1, 3.2, 3.3 and 3.4 of the Plan specify the treatment for each of these Impaired Classes. Therefore, section 1123(a)(3) of the Bankruptcy Code is satisfied.

61. Fourth, section 1123(a)(4) of the Bankruptcy Code requires that the Plan "provide the same treatment for each claim or interest of a particular class, unless the holder of a particular claim or interest agrees to a less favorable treatment of such particular claim or interest." 11 U.S.C. § 1123(a)(4). The Plan contemplates that Holders of Claims and Interests within a particular Class will receive the same treatment as Holders within the same Class, unless the

Holder of a particular Claim has agreed to less favorable treatment with respect to such Claim. Therefore, section 1123(a)(4) of the Bankruptcy Code is satisfied.

62. Fifth, section 1123(a)(5) of the Bankruptcy Code requires that the Plan provide "adequate means" for its implementation. 11 U.S.C. § 1123(a)(5). Article II of the Plan, entitled "Implementation and Execution of the Plan," sets forth numerous provisions to facilitate implementation of the Plan, including, among others, provisions concerning the Delaware Street settlement, establishment of the Hartford Liquidating Trust, appointment of the Hartford Liquidating Trustee, liquidation of assets, and dissolution of the Debtors. Therefore, section 1123(a)(5) of the Bankruptcy Code is satisfied.

63. Sixth, section 1123(a)(6) of the Bankruptcy Code requires that a reorganized debtor's corporate constituent documents prohibit the issuance of non-voting equity securities. Pursuant to Article 2.14.2 of the Plan, the Debtors will be dissolved and the Debtors' assets will be transferred to the Hartford Liquidating Trust and Delaware Street, as described in the Plan. Accordingly, the Debtors will cease to exist and will have no constituent documents or equity securities. Also, pursuant to section 3.4 and 6.3 of the Plan, all Interests in the Debtors' shall be cancelled as of the Effective Date. As a result, section 1123(a)(6) of the Bankruptcy Code is inapplicable.

64. Seventh, section 1123(a)(7) of the Bankruptcy Code requires that the Plan's provisions with respect to the manner of selection of any director, officer, or trustee, or any successor thereto, be "consistent with the interests of creditors and equity security holders and with public policy." 11 U.S.C. § 1123(a)(7). The Plan provides for the resignation of the current officers and directors of each of the Debtors. And, as previously noted, the Debtors will be dissolved and their assets will be transferred to the Hartford Liquidating Trust and Delaware

Street. Accordingly, the Plan does not provide for the selection of directors or officers of the Debtors.

65. Except with respect to the DSC Assigned Causes of Action and the Earnout, the representative of the Debtors will be the Hartford Liquidating Trustee. The Hartford Liquidating Trust Agreement identifies the Hartford Liquidating Trustee as Peter Kravitz, the current chairman of the Committee, and his duties. The Hartford Liquidating Trustee was selected after negotiations between the Debtors, the Committee and Delaware Street.

66. Thus, the Debtors submit that the foregoing provisions are consistent with the interests of Creditors and Interest Holders and with public policy. Accordingly, the Plan provisions satisfy the requirements of section 1123(a)(7) of the Bankruptcy Code.

iii. Discretionary Contents of the Plan (1123(b)).

67. Section 1123(b) of the Bankruptcy Code identifies various discretionary provisions that may be included in a plan of reorganization, but are not required. For example, a plan may impair or leave unimpaired any class of claims or interests and provide for the assumption or rejection of executory contracts and unexpired leases. 11 U.S.C. § 1123(b)(1)-(2). A plan also may provide for: (i) "the settlement or adjustment of any claim or interest belonging to the debtor or to the estate"; (ii) "the retention and enforcement by the debtor, by the trustee, or by a representative of the estate appointed for such purpose, of any such claim or interest"; or (iii) "the sale of all or substantially all of the property of the estate, and the distribution of the proceeds of such sale among holders of claims or interests". *Id.* § 1123(b)(3)(A)-(B), 1123(b)(4). Finally, a plan may "modify the rights of holders of secured claims . . . or . . . unsecured claims, or leave unaffected the rights of holders of any class of claims" and may

"include any other appropriate provision not inconsistent with the applicable provisions of [Title 11]." *Id.* § 1123(b)(5)-(6).

68. The Plan provides for: (i) the impairment of classes of Claims and Interests, thereby modifying the rights of the Holders of certain Claims and Interests as described above; (ii) the rejection of certain executory contracts and unexpired leases to which the Debtors are parties (Section 4.2 of the Plan); and (iii) the settlement and adjustment of Delaware Street's claims.

69. In accordance with section 1123(b)(6) of the Bankruptcy Code, the Plan includes additional provisions that are not inconsistent with applicable provisions of the Bankruptcy Code, including: (i) the provisions regarding the means for implementation of the Plan and governing distributions on account of Allowed Claims (Article II); and (ii) certain releases, injunctions and exculpations, and the retention of jurisdiction by the Bankruptcy Court over certain matters after the Effective Date (Article VI).

iv. Delaware Street Settlement.

70. The Plan is predicated upon the approval of the settlement between the Committee, the Debtors and Delaware Street. The settlement agreement is embodied throughout the terms of the Plan and described in detail in Section II.E.ii above.

71. In evaluating settlements contained in a plan, Courts consider Bankruptcy Rule 9019. *See, e.g., Bartel v. Bar Harbor Airways, Inc.*, 196 B.R. 268 (S.D.N.Y. 1996). Bankruptcy Rule 9019 provides that the Bankruptcy Court "may approve a compromise or settlement." Compromises are tools for expediting the administration of the case and reducing administrative costs, and are favored in bankruptcy. *See Fogel v. Zell*, 221 F.3d 955, 960 (7th Cir. 2000); *In re Bond*, 1994 U.S. App. Lexis 1282, *9-* 14 (4th Cir. 1994) ("To minimize

litigation and expedite the administration of a bankruptcy estate, 'compromises are favored in bankruptcy'."); and *In re Martin*, 91 F.3d 389, 393 (3d Cir. 1996).

72. The standards by which a court should evaluate a settlement are well established. In addition to considering the proposed terms of the settlement, the court should consider the following factors:

(i) the probability of success in litigation;

(ii) the difficulty in collecting any judgment that may be obtained;

(iii) the complexity of the litigation involved, and the expense, inconvenience and delay necessarily attendant to it; and

(iv) the interest of creditors and stockholders and a proper deference to their reasonable views of the settlement.

See Protective Comm for Indep. Stockholders of TMT Trailer Ferry, Inc. v. Anderson, 390 U.S. 414, 424-425 (1968); *In re Frye*, 216 B.R. 166, 174 (E.D. Va. 1997); *United States ex rel. Rahman v. Oncology Assocs., P.C.*, 269 B.R. 139, 152 (D. Md. 2001).

73. The decision to approve a settlement or compromise is within the discretion of the court and is warranted where the settlement is found to be reasonable and fair in light of the particular circumstances of the case. *See TMT Trailer Ferry*, 390 U.S. at 424-25. The settlement need not be the best that the debtor could have achieved, but need only fall "within the reasonable range of litigation possibilities." *In re Telesphere Communications, Inc.*, 179 B.R. 544, 553 (Bankr. N.D. Ill. 1994). In making its determination, a court should not substitute its own judgment for that of the debtor and should defer to the debtor so long as there is a reasonable business justification. *See In re Martin*, 91 F.3d 389, 395 (3d Cir. 1996); *In re Jasmine, Ltd.*, 258 B.R. 119, 123 (D.N.J. 2000). The court should exercise its discretion "in light

of the general public policy favoring settlements." *In re Hibbard Brown & Co., Inc.*, 217 B.R. 41, 46 (Bankr. S.D.N.Y. 1998); *Nellis v. Shugrue*, 165 B.R. 115, 123 (S.D.N.Y. 1994) ("[T]he general rule [is] that settlements are favored and, in fact, encouraged by the approval process outlined above.").

74. Here, approval of the Delaware Street settlement is warranted because each factor in *TMT Trailer Ferry* weighs in favor of approving the settlement or is neutral and having agreed to the settlement is in the best interests of all of the Debtors' Estates. Specifically, the Committee determined: (i) there was substantial risk that it would be unsuccessful in litigation on the Delaware Street Claims; and (ii) the complexity of the litigation involved and the expense, inconvenience and delay necessarily attendant to it outweighed any benefit that may be received from the litigation; and (iii) even if it was substantially successful on the claims it identified, there was significant risk of leaving unsecured creditors little if any better off than they are under the settlement.

75. The settlement provides a return to general unsecured creditors that they may very well not get without the Settlement Sum being paid by Delaware Street. Based on the foregoing, the Debtors submit that the settlement is beneficial to and in the best interests of the Debtors' Estates and their Creditors. The settlement represents a compromise that is fair and equitable, falls well within the range of reasonableness, and satisfies the standards for approval under applicable law.

76. The MRR Group has objected to the Plan because it settles and dismisses the Shareholder Suit. However, the MRR Group is barred from making such objection and the objection should be overruled.

77. Since the very early days of these Chapter 11 cases, the MRR Group has been well aware that it was required to file an adversary proceeding or contested matter with this Court to pursue the claims asserted in their Shareholder Suit.

78. Just three days into the case, a bar date to (i) investigate claims against Delaware Street and (ii) file an adversary proceeding or contested matter asserting such claims was established through the Court's Interim Order (A) Authorizing the Debtors to Obtain Post-Petition Financing Pursuant to 11 U.S.C. § 364; (B) Authorizing the Use of Cash Collateral Pursuant to 11 U.S.C. § 363; and (C) Granting Adequate Protection to The Pre-Petition Secured Lender Pursuant to 11 U.S.C. §§ 361 and 363 [Doc. No. 66] (the "Interim Order"). *See* Interim Order ¶ 29.

79. Recognizing that the bar date applied to its claim, on January 20, 2009, the MRR Group filed a Limited Objection to the Debtors' request for a final order approving debtor-in-possession financing [Doc. No. 104] (the "DIP Objection") wherein it specifically requested that the bar date be deemed inapplicable to its claims alleged in the Shareholder Suit. In its objection, the MRR Group stated:

> The Interim Order provides an opportunity for a party in interest with requisite standing to timely file a challenge to the Pre-petition Obligations and the liens on the Pre-petition Collateral as characterized in the Interim Order. *Id*. The [MRR Group is a party] in interest to the sale of the Debtors by virtue of the potential for a sale to affect [its] financial stake therein. The [MRR Group has] standing to contest the Pre-petition Obligations, and [has] done so in the Delaware Chancery Court Litigation prior to the filing of these cases. Since the Complaint has been pending in the Delaware Chancery Court since August, 2011, the [MRR Group] should not be required to file duplicative litigation in this Court and should be excluded from the provisions of paragraph 29 of the Interim Order.
>
> The [MRR Group] request[s] that any final order approving the Financing Motion entered by this Court (i) expressly acknowledge the [MRR Group's] rights, subject to the provisions of section 362 of the Bankruptcy Code, if and to the extent applicable, to pursue [its] existing claims against Delaware Street and the Delaware Street Director Defendants through the Delaware Chancery Court

> Litigation, (ii) provide that nothing in such order, including paragraph 29, shall impair, limit or require action by any date certain to preserve the [MRR Group's] rights and claims against Delaware Street and the Delaware Street Director Defendants, (iii) provide that the stipulations and admissions contained in any final order approving the Financing Motion are not binding upon the [MRR Group] or in any way adversely affect the Delaware Chancery Court Litigation and (iv) require any bankruptcy sale proceeds to be escrowed by the Debtors until such time as the Delaware Chancery Court Litigation is concluded or a plan of reorganization is confirmed in these cases.

DIP Objection ¶¶ 15 & 17.

80. At the hearing, the Court overruled the DIP Objection and entered its Final Order (i) Authorizing the Debtors To Obtain Post-Petition Financing Pursuant To 11 U.S.C. § 364; (i) Authorizing the Use Of Cash Collateral Pursuant To § 363; (iii) Granting Adequate Protection To the Pre-Petition Secured Lender Pursuant To 11 U.S.C. §§ 361 and 363; and (iv) Scheduling A Final Hearing Pursuant To Bankruptcy Rule 4001 on January 25, 2012 [Doc. No. 137] ("Final DIP Order"). *See* Final DIP Order ¶ 1 (overruling all objections).

81. Similar to the provisions of the Interim DIP Order that established a bar date and investigation period, the Final DIP Order permitted parties in interest a period of 90 days to investigate any challenge to Delaware Street's claims and to bring an adversary proceeding or contested matter asserting any such claims, including any claims of the Shareholders, (as more fully defined in the Final DIP Order, a "Challenge"). Final DIP Order ¶ 29. Failure to bring a timely Challenge before this Court, was an absolute bar to such claims under the Final DIP Order. *Id*. As this Court ordered:

> If no such adversary proceeding or contested matter is timely filed in respect of the Pre-petition Obligations, (x) the Pre-petition Obligations shall constitute allowed claims, not subject to counterclaim, setoff, subordination, re-characterization, defense or avoidance, for all purposes in the Chapter 11 Cases and any subsequent Chapter 7 case, (y) the liens on the Pre-petition Collateral securing the Pre-petition Obligations shall be deemed to have been, as of the Petition Date, and to be, legal, valid, binding, and perfected first priority liens not subject to defense, counterclaim, re-characterization, subordination or avoidance,

> and (z) the Pre-petition Obligations and the liens on the Pre-petition Collateral granted to secure the Pre-petition Obligations shall not be subject to any other or further challenge by any party-in-interest, and all such parties-in-interest shall be enjoined from seeking to exercise the rights of the Debtors' estates, including without limitation, any successor thereto (including, without limitation, any estate representative or trustee appointed or elected for any of the Debtors' estates).

Id.

82. Despite being granted an investigation period, the MRR Group chose not to undertake any discovery with respect to its alleged claims against Delaware Street. It did not request documents from the Debtors or Delaware Street. It did not seek depositions of the Debtors or Delaware Street.

83. The investigation period was initially set to expire on April 25, 2012, however the Debtors, Delaware Street and the Committee agreed to extend the investigation period until June 11, 2012. Yet, even with the extension, the MRR Group failed to bring a Challenge against Delaware Street prior to the bar date. As a result, pursuant to the terms of the Final DIP Order, the MRR Group's claims against Delaware Street, including all of those set forth in the Shareholder Suit, are forever barred.

84. Now, after knowingly foregoing any Challenge, the MRR Group asserts without any basis or support that its claims should not be barred. This objection must be overruled.

85. There can be no dispute that the MRR Group knew it was required to file a proper Challenge to pursue claims against Delaware Street. It specifically requested in its DIP Objection that its claims asserted in the Shareholder Suit be excluded from the terms of the Final DIP Order. This Court denied the request and, as a result, the MRR Group was required to file a Challenge.

86. The Shareholder Suit was not filed with this Court, as required by the Final DIP Order, and the MRR Group did not take any action to attempt to have it heard by this Court

either by re-filing, motion for standing, or transfer. The MRR Group chose not to file a Challenge and is now, therefore, barred from doing so.

87. Moreover, the Shareholder Suit only alleges claims that belong to the estate and, through the Final DIP Order, the Committee. The Committee was the only party with standing to bring a Challenge and it conducted an investigation, analyzed the potential claims against Delaware Street, and concluded that the proposed settlement was in the best interests of the Debtors' estates and Creditors.

88. Also misplaced is the MRR Group's contention that the claims raised in the Shareholder Suit are not derivative claims that can be settled by the Committee. The claims are either entirely derivative or have been rendered moot by the Avnet Transaction.

89. Counts I, II, III, and V of the Shareholder Suit assert claims for breach of fiduciary duty, Count VI asserts a "derivative claim" for failure to refinance, Count VII asserts a claim for corporate waste, Count IX for recharacterization of Delaware Street's loan, and Count X asserts claims for aiding and abetting breaches of fiduciary duty. All of these counts are entirely derivative. *Koch Ref. v. Farmers Union Cent. Exch., Inc.*, 831 F.2d 1339, 1343-44 (7th Cir. 1987) (the estate includes any action a debtor corporation may have "to recover damages for fiduciary misconduct, mismanagement or neglect of duty" and the trustee succeeds to the right to bring such actions); *In re Ambac Financial Group, Inc.*, No. 11-4643, 2012 WL 2849748 (2d Cir. July 12, 2012) ("[W]hile normally the fiduciary obligation of officers, directors and shareholders 'is enforceable directly . . . through a stockholder's derivative action, it is, in the event of bankruptcy of the corporation, enforceable by the trustee' " or debtor-in-possession.") (quoting *Pepper v. Litton*, 308 U.S. 295, 307 (1939)).

90. Count IV attempts to void a possible sale of the Debtors' assets, but that count has been rendered moot by the Avnet Transaction, which was approved by the Sale Order and cannot be reversed or voided. 11 U.S.C. § 363(m).

91. Count VIII improperly seeks to equitably subordinate Delaware Streets' loans "to the interest of the Series A Preferred and Class B Common Stockholders". Under the Bankruptcy Code, a court may "subordinate for the purposes of distribution all or part of an allowed claim to all or part of another allowed claim **or** all or part of an allowed interest to all or part of another allowed interest". 11 U.S.C. § 510(c)(1) (emphasis added). "In sum, § 510(c)'s language plainly provides that a creditor's claim can be subordinated only to the claims of other creditors, not equity interests." *Schubert v. Lucent Technologies Inc. (In re Winstar Communications, Inc.)*, 55 F.3d 382, 414 (3rd Cir. 2009) (noting the distinction between proof of claims, which may be filed by creditors, and proofs of interest, which may be filed by equity holders, in 11 U.S.C. § 501(a)); *Official Comm. of Unsecured Creditors of Champion Enters., Inc., v. Credit Suisse (In re Champion Enterprises, Inc.)*, 2010 WL 3522132, *13-14 (Bankr. D. Del. 2010); *see also* COLLIER ON BANKRUPTCY at § 510.05 ("Under subsection (c)(1), claims may be subordinated to claims, and interests may be subordinated to interests, but claims may not be subordinated to interests."). Moreover, equitable subordination is not allowed "when subordination is inconsistent with the Bankruptcy Code." *In re Sentinel Management Group, Inc.*, --- F.3d ---, 2012 WL 3217614, *7 (7th Cir. August 9, 2012) (citing *In re Kreisler*, 546 F.3d 863, 866 (7th Cir.2008) (quoting *United States v. Noland*, 517 U.S. 535, 538–39, 116 S.Ct. 1524, 134 L.Ed.2d 748 (1996). As such, any attempt to equitably subordinate Delaware Streets' claim to an equity interest is barred.

92. As a result, the MRR Group's objections based upon their barred claims against Delaware Street should be denied and for the reasons detailed herein and approval of the settlement is warranted under Bankruptcy Rule 9019, the Bankruptcy Code and applicable case law.

v. Executory Contracts and Unexpired Leases.

93. Through their prior motions and orders related thereto, the Debtors believe they have either assumed or rejected all of the executory contracts. However, to the extent there are any remaining executory contracts, the Debtors reject them pursuant to the Plan.

94. The Debtors submit that they have exercised appropriate business judgment in determining to reject all of the remaining executory contracts and unexpired leases as set forth in the Plan. The Debtors do not believe that any remaining pre-petition executory contracts or unexpired leases have any value to the Debtors or their Estates.

95. Accordingly, Article IV of the Plan provides that the Confirmation Order shall constitute an order under Bankruptcy Code section 365 rejecting all pre-petition executory contracts and unexpired leases to which any Debtor is a party, to the extent such contracts or leases are executory contracts or unexpired leases, on and subject to the occurrence of the Effective Date, unless such contract or lease (i) has been previously assumed or rejected by order of the Bankruptcy Court or (ii) previously expired pursuant to its own terms before the Effective Date.

B. Compliance of Debtors with the Applicable Provisions of Title 11 (Section 1129(a)(2)).

96. Section 1129(a)(2) of the Bankruptcy Code requires the proponent of a plan to comply with the applicable provisions of the Bankruptcy Code. The principal purpose of section 1129(a)(2) is to ensure that a plan proponent has complied with the requirements of the

Bankruptcy Code regarding solicitation of acceptances of the plan. *See, e.g., Multuit*, 449 B.R. at 339 (holding "The legislative history of this section indicates that Congress was concerned "that the proponent of the plan comply with the applicable provisions of Chapter 11, such as section 1125 regarding disclosure."); *In re PWS Holding Corp*., 228 F.3d 224, 248 n.23 (3d Cir. 2000) (noting that "[t]he principal purpose of section 1129(a)(2) of the Bankruptcy Code is to assure that the plan proponents have complied with the disclosure requirements of section 1125 of the Bankruptcy Code in connection with solicitation of acceptances of the plan.") (citation and internal quotations omitted); *In re Stations Holding Co.*, No. 02-10882, 2002 WL 31947022, at *3 (Bankr. D. Del. Sept. 30, 2002) (finding that the debtor had complied with section 1129(a)(2) of the Bankruptcy Code because, "[i]n particular, the solicitation of acceptances or rejections of the Plan was solicited after disclosure . . . of 'adequate information"). The Debtors have complied with the applicable provisions of Title 11, including the provisions of section 1125 regarding disclosure and plan solicitation.

97. Section 1125 of the Bankruptcy Code prohibits the solicitation of acceptances or rejections of a Chapter 11 plan from holders of claims or interests "unless, at the time of or before such solicitation, there is transmitted to such holder the plan or a summary of the plan, and a written disclosure statement approved . . . by the court as containing adequate information." 11 U.S.C. § 1125(b). In these cases, the Bankruptcy Court entered the Solicitation/Disclosure Statement Order approving the Disclosure Statement on August 10, 2012, which, among other things, specifically found that the Disclosure Statement contained adequate information within the meaning of section 1125 of the Bankruptcy Code. In addition, the Bankruptcy Court considered and approved (a) all materials to be transmitted to those holders of

Claims entitled to vote on the Plan, (b) the timing and proposed method of delivery of materials, and (c) the proposed rules for tabulating votes to accept or reject the Plan.

98. Thereafter, the Debtors and their professionals prepared the approved Solicitation Materials for distribution. The Solicitation Materials include: (a) copies of the Solicitation/Disclosure Statement Order, the Disclosure Statement with all exhibits, including the Plan, and any other current supplements or amendments to those documents; and (b) the applicable Confirmation Hearing Notice that states, among other things, the time fixed by the Bankruptcy Court for: (i) returning Ballots reflecting acceptances and rejections of the Plan; (ii) the Confirmation Hearing; and (iii) filing objections to confirmation of the Plan.

99. The Debtors distributed: (a) the Solicitation Materials; (b) the appropriate Ballots and applicable voting instructions; (c) a letter in support of the Plan from the Committee and (d) a pre-addressed, postage pre-paid return envelope to the holders of all Claims in Classes indicated in the Disclosure Statement as being entitled to vote on the Plan, *i.e.*, Classes I (Secured Claims-Delaware Street) and III (General Unsecured Creditors) (collectively, the "Voting Claims"). *See* Certificate of Service [Docket No. 446].

100. The Debtors also distributed the Solicitation Materials to: (a) counsel for the Committee; (b) the United States Trustee; (c) the Securities and Exchange Commission; and (d) those persons and entities that have formally requested notice pursuant to Bankruptcy Rule 2002. *Id.*

101. The holders of Class 2 (Subordinated Secured Claims) and Class 4 (Equity Interests) will not receive any distribution under the Plan, and are thus conclusively presumed to have rejected the Plan. Pursuant to the Disclosure Statement Order, the Debtors did not distribute the Solicitation Materials to holders of claims in Classes 2 and 4.

102. However, the Debtors did send to holders of claims in Classes II and IV the Confirmation Hearing Notice and the Impaired Non-Voting Notice, that: (a) included a summary of the treatment provided under the Plan to such Class; (b) advised that the Disclosure Statement and Plan can be obtained upon written request to the Balloting Agent, through the Balloting Agent's internet website at http://www.kccllc.net/hartford, or (for a fee) via PACER at: https://www.ilnd.uscourts.gov; (c) included the date of the Confirmation Hearing; and (d) stated the date fixed to file objections to confirmation of the Plan. *Id*.

103. Accordingly, the Debtors have satisfied the solicitation requirements imposed by section 1125 of the Bankruptcy Code and Bankruptcy Rules 3017 and 3018 and the Plan satisfies the requirements of section 1129(a)(2) of the Bankruptcy Code.

C. Good Faith (Section 1129(a)(3)).

104. Section 1129(a)(3) of the Bankruptcy Code requires that a plan of reorganization be "proposed in good faith and not by any means forbidden by law." 11 U.S.C. § 1129(a)(3). In the context of section 1129(a)(3), the measure of good faith is whether there is a reasonable likelihood that the plan will achieve a result consistent with the standards prescribed under the Bankruptcy Code. *Multuit*, 449 B.R. at 341; *see also In re 203 N. LaSalle St. Ltd. P'ship*, 126 F.3d 955, 969 (7th Cir. 1997).

105. In determining whether a plan will succeed and accomplish goals consistent with the Bankruptcy Code, courts look to the terms of the plan and determine, in light of the particular facts and circumstances, whether the plan will fairly achieve a result consistent with the Bankruptcy Code. *Id*.; *see, also, In re Future Energy Corp.*, 83 B.R. 470, 486 (Bankr. S.D. Ohio 1988) (noting that while the term "good faith" is not specifically defined in the Bankruptcy Code, a plan is proposed in good faith when there is a reasonable likelihood that the plan will

achieve a result consistent with the objectives and purposes of the Bankruptcy Code). The plan proponent must show, therefore, that the plan has not been proposed by any means forbidden by law and that the plan has a reasonable likelihood of success. *See In re Century Glove, Inc*., 1993 WL 239489, at *4 (D. Del. Feb. 10, 1993) ("'[W]here the plan is proposed with the legitimate and honest purpose to reorganize and has a reasonable hope of success, the good faith requirement of section 1129(a)(3) is satisfied.' (citation omitted)); *see also Fin. Sec. Assur. Inc. v. T-H New Orleans Ltd. P'ship (In re T-H New Orleans Ltd. P'ship)*, 116 F.3d 790, 802 (5th Cir. 1997) (same).

106. The focus of the good faith inquiry is the plan itself and it is viewed based on the "totality of the circumstances" surrounding the development and proposal of that plan. *Multuit*, 449 B.R. at 341 (holding "To be in good faith, a plan must have 'a true purpose and fact-based hope of either 'preserving [a] going concern' or 'maximizing property available to satisfy creditors.'" (internal citations omitted)).

107. To find that a plan does not comply with section 1129(a)(3) generally requires "misconduct in bankruptcy proceedings, such as fraudulent misrepresentation or serious nondisclosures of material facts to the court." *Multuit*, 449 B.R. at 342 (citing *In re River Vill. Assocs*., 161 B.R. 127, 140 (Bankr.E.D.Pa.1993), *aff'd*, 181 B.R. 795 (E.D.Pa.1995)).

108. The Seventh Circuit has produced a non-exclusive list of factors embodied in its "totality of the circumstances" test to consider in determining good faith in Chapter 13 cases, which has been used in Chapter 11 cases. *Multuit*, 449 B.R. at 342. As set forth in *Multuit*:

> The factors include (1) whether the plan states secured and unsecured debts accurately; (2) whether expenses are accurately disclosed; (3) whether the percentage distribution to unsecured claimants is accurate; (4) whether inaccuracies in the plan amount to an attempt to mislead the court; and (5) whether the proposed payments show fundamental fairness in dealing with one's creditors.

Multuit, 449 B.R. at 342 (citing *In re Smith*, 848 F.2d 813, 817–22 (7th Cir. 1988); *In re Rimgale*, 669 F.2d 426, 432–33 (7th Cir. 1982); s*ee also In re Smith*, 286 F.3d 461, 466 (7th Cir. 2002); *In re Love*, 957 F.2d 1350, 1355 (7th Cir. 1992); *In re Schaitz*, 913 F.2d 452, 453–54 (7th Cir. 1990).

109. The Plan accurately states: (i) secured and unsecured debts, (ii) expenses, and (iii) the percentage distribution to unsecured creditors. The proposed payments set forth in the Plan show fundamental fairness in dealing with one's creditors.

110. The Plan has been proposed by the Debtors in good faith, with the legitimate and honest intent to provide a cost-effective distribution of the proceeds of the sale to Creditors and to dispose of all remaining assets in an efficient manner. As described in the Disclosure Statement, the Debtors believe that the value of the Debtors' Estates is greater under the proposed Plan than in any other form of liquidation, including liquidation under Chapter 7 of the Bankruptcy Code.

111. Accordingly, the Debtors believe that the Plan will result in the greatest possible recoveries to Creditors. To arrive at this stage in these Chapter 11 Cases, the Debtors actively involved their various Creditor constituencies including secured lenders and the Committee. The Plan formulation process was marked by extensive arm's length negotiations between the Debtors, Delaware Street, and the Committee. The Plan is the culmination of those negotiations. As a result, the Debtors believe that the Plan represents the fairest and most efficient means of distribution of the Debtors' remaining assets. *See Stolrow v. Stolrow's, Inc. (In re Stolrow's, Inc.)*, 84 B.R. 167, 172 (B.A.P. 9th Cir. 1988) (holding that good faith in proposing a plan "also requires a fundamental fairness in dealing with one's creditors").

112. Moreover, the support of the Debtors' primary constituencies and the virtually unanimous acceptance of the Plan by Holders of Claims that cast Ballots reflect the overall fairness of the Plan and the acknowledgment by the Debtors' Creditors that the Plan has been proposed in good faith and for proper purposes. *See In re Eagle-Picher Indus., Inc.*, 203 B.R. 256, 274 (S.D. Ohio 1996) (finding that a Chapter 11 plan was proposed in good faith when, among other things, it was based on extensive arm's length negotiations among the plan proponents and other parties in interest). In light of the foregoing, the Debtors submit that they acted in good faith in proposing and pursuing confirmation of the Plan and that the Plan is not proposed by any means forbidden by law. Therefore, the good faith requirement of section 1129(a)(3) of the Bankruptcy Code has been satisfied.

D. Payments for Services and Expenses (Section 1129(a)(4)).

113. Section 1129(a)(4) of the Bankruptcy Code requires that:

> Any payment made or to be made by the proponent, by the debtor, or by a person issuing securities or acquiring property under the plan, for services or for costs and expenses in or in connection with the case, or in connection with the plan and incident to the case, has been approved by, or is subject to the approval of, the court as reasonable.

11 U.S.C. § 1129(a)(4). In essence, this subsection requires that any and all fees promised or received in connection with or in contemplation of a Chapter 11 case must be disclosed and approved, or subject to approval, by the court. *In re Eagle-Picher Indus*., 203 B.R. at 274 and *In re Future Energy Corp.*, 83 B.R. 470, 487-88 (Bankr. S.D. Ohio 1998) (noting that certain payments, as detailed in section 1129(a)(4), are subject to approval by the bankruptcy court).

114. Section 1129(a)(4) of the Bankruptcy Code has been construed to require that all payments of professional fees that are made from estate assets be subject to review and approval by the court as to their reasonableness. *See, e.g., In re Drexel Burnham Lambert Group Inc.*,

138 B.R. 723, 760 (Bankr. S.D.N.Y. 1992). The Bankruptcy Court-appointed professionals in these cases are subject to the requirements of sections 330 and 331 of the Bankruptcy Code and, therefore, fees payable to those professionals have been approved by or are subject to approval of the Bankruptcy Court as reasonable.

115. Article VII of the Plan provides that all unpaid Professional Fees shall be subject to final allowance or disallowance upon application to the Bankruptcy Court pursuant to the Bankruptcy Code. In addition, Article VI of the Plan provides that the Bankruptcy Court will retain jurisdiction after the Effective Date to hear and determine all applications for allowance of reasonable compensation and reimbursement of expenses of Professionals under the Plan or under Bankruptcy Code sections 330, 331, 503(b), 1103, and 1129(a)(4). These procedures for the Bankruptcy Court's review and ultimate determination of the reasonable fees, costs, and expenses to be paid by the Debtors satisfy the requirements of section 1129(a)(4). *In re Resorts Intl, Inc.*, 145 B.R. 412, 475-76 (Bankr. D.N.J. 1990) (as long as fees, costs and expenses are subject to final approval of court, section 1129(a)(4) is satisfied).

116. Accordingly, the Plan fully complies with the requirements of section 1129(a)(4) of the Bankruptcy Code.

E. Identification of Directors, Officers and Insiders (Section 1129(a)(5)).

117. Section 1129(a)(5) of the Bankruptcy Code requires a debtor to disclose the identity of certain individuals who will hold positions with the reorganized debtors after confirmation of the Plan. *See* 11 U.S.C. § 1129(a)(5). Pursuant to section 1129(a)(5)(A)(i) of the Bankruptcy Code, the proponent of a plan must disclose the "identity and affiliations of any individual proposed to serve, after confirmation of the plan, as a director, officer, or voting trustee of the debtor, an affiliate of the debtor participating in a joint plan with the debtor, or a

successor to the debtor under the plan." 11 U.S.C. § 1129(a)(5)(A)(i). Section 1129(a)(5)(A)(ii) of the Bankruptcy Code further requires that the service of such individuals be "consistent with the interests of creditors and equity security holders and with public policy." *Id*. § 1129(a)(5)(A)(ii). Section 1129(a)(5)(B) of the Bankruptcy Code requires that the plan proponent disclose the "identity of any insider that will be employed or retained by the reorganized debtor, and the nature of any compensation for such insider." *Id*. § 1129(a)(5)(B).

118. As discussed above, the Plan provides for the liquidation and dissolution of the Debtors as well as the resignation and discharge of all of the Debtors' officers.

119. The only remaining representative of the Debtors will be the Hartford Liquidating Trustee.

120. The Hartford Liquidating Trustee is defined in the Plan and Liquidating Trust Agreement. The Hartford Liquidating Trustee is competent, has relevant and significant business and industry experience and will ably represent the interests of the beneficiaries of the Hartford Liquidating Trust. Accordingly, the employment of the Hartford Liquidating Trustee is consistent with the interests of Creditors as it will help ensure a swift resolution and the most efficient distribution of the Debtors' assets to their Creditors.

121. Accordingly, the Debtors have satisfied the requirements of section 1129(a)(5) of the Bankruptcy Code.

F. Rate Changes (Section 1129(a)(6)).

122. Section 1129(a)(6) of the Bankruptcy Code requires, with respect to a debtor whose rates are subject to governmental regulation following confirmation, that appropriate governmental approval has been obtained for any rate change provided for in the plan, or that such rate change be expressly conditioned on such approval. Section 1129(a)(6) of the

Bankruptcy Code is satisfied because the Plan does not provide for any change in rates over which a governmental regulatory commission has jurisdiction.

G. The "Best Interests" Test (Section 1129(a)(7)).

123. The Bankruptcy Code protects creditors and equity security holders who are impaired by the Plan and who have not voted to accept the Plan through the "best interests" test of section 1129(a)(7) of the Bankruptcy Code, which provides that the court shall confirm a plan of reorganization if, with respect to each impaired class of claims or interests:

> (A) each holder of a claim or interest of such class –
>
> > (i) has accepted the plan; or
> >
> > (ii) will receive or retain under the plan on account of such claim or interest property of a value, as of the effective date of the plan, that is not less than the amount that such holder would so receive or retain if the debtor were liquidated under Chapter 7 of this title on such date.

11 U.S.C. § 1129(a)(7).

124. Through the "best interest of creditors" test of section 1129(a)(7), the Bankruptcy Code protects non-consenting members of impaired, accepting classes by ensuring that each dissenting member of the impaired class receives at least what the dissenting member would receive if the debtor were liquidated under Chapter 7 of the Bankruptcy Code. *203 N. LaSalle*, 126 F.3d at 969 and *SK-Palladin Partners, L.P. v. Platinum Entm't, Inc.*, No. 01 C 7202, 2001 WL 1593154, at *4 (N.D. Ill. Dec. 13, 2001). If the Bankruptcy Court finds that each non-consenting member of an impaired class will receive at least as much under the Plan as it would receive in a Chapter 7 liquidation, the Plan satisfies the "best interests" test. *See Future Energy*, 83 B.R. at 490 (finding that section 1129(a)(7) was satisfied when the dissenting impaired classes would not have received more under a Chapter 7 liquidation than they received under the proposed plan); *accord Liberty Nat'l Enters. v. Ambanc La Mesa Ltd. P'ship (In re*

Ambanc La Mesa Ltd. P'ship), 115 F.3d 650, 657 (9th Cir. 1997); *Kane v. Johns-Manville Corp.*, 843 F.2d 636, 649 (2d. Cir. 1988); *In re Leslie Fay Cos.*, 207 B.R. 764, 787 (Bankr. S.D.N.Y. 1997).

125. A court, in considering whether a plan is in the "best interests" of creditors, is not required to consider any alternative to the plan other than the dividend projected in a liquidation of all of the debtor's assets under Chapter 7 of the Bankruptcy Code. *See, e.g., Future Energy*, 83 B.R. at 489-90 (suggesting that the "best interests" test requires looking at the plan as compared with a Chapter 7 liquidation); *In re Crowthers McCall Pattern, Inc.*, 120 B.R. 279, 297 (Bankr. S.D.N.Y. 1990); *In re Victory Constr. Co.*, 42 B.R. 145, 151 (Bankr. C.D. Cal. 1984). As section 1129(a)(7) makes clear, the best interests of creditors test is applicable only to non-accepting holders of impaired claims and interests. *See* 11 U.S.C. § 1129(a)(7). The test requires that each Holder of a Claim or Interest either accepts the Plan or will receive or retain under the Plan property having a present value, as of the Effective Date, not less than the amount that such Holder would receive or retain if the Debtors were liquidated under Chapter 7 of the Bankruptcy Code.

126. The Debtors have liquidated substantially all of their assets through the asset sale during the Chapter 11 cases. The Debtors believe that liquidation under Chapter 11 is more beneficial to the Holders of Claims than a liquidation under Chapter 7 because the Plan allows the Debtors' remaining assets to be promptly and efficiently liquidated and administered and, via the Delaware Street settlement, unsecured creditors will receive distributions unlikely available in a Chapter 7 liquidation. Additionally, if these cases were to be converted to Chapter 7 cases, the Debtors' Estates would incur the costs of payment of a statutorily allowed commission to the Chapter 7 trustee, as well as the costs of counsel and other professionals retained by the trustee,

and could require payment, pursuant to Bankruptcy Code section 726(a), of certain late-filed Administrative and Priority Claims prior to any distribution to unsecured creditors. The Debtors believe such amounts would exceed the amount of expenses that would be incurred in implementing the Plan and winding up the affairs of the Debtors. The Debtors' Estates would also be obligated to pay all unpaid expenses incurred by the Debtors during these Chapter 11 Cases (such as compensation for professionals), which are allowed in chapter 7 cases prior to any distribution to unsecured creditors. Accordingly, the Debtors believe that Holders of Allowed Claims would receive less than anticipated under the Plan if the Chapter 11 Cases were converted to chapter 7 cases.

127. Accordingly, each dissenting Holder of a Claim or Interest in each Impaired Class will receive or retain under the Plan, on account of such Claim or Interest, property of a value, as of the Effective Date of the Plan, that is not less than the amount that it would receive in a chapter 7 liquidation of the Debtors' assets on such date. As a result, the Plan satisfies the requirements of section 1129(a)(7) of the Bankruptcy Code.

H. Acceptance by Impaired Classes (Section 1129(a)(8)).

128. Section 1129(a)(8) of the Bankruptcy Code requires that each class of claims or interests under a plan either has accepted the plan or is not impaired by the plan. A class of claims or interests that is not impaired under a plan is "conclusively presumed" to have accepted the plan and need not be further examined under section 1129(a)(8). 11 U.S.C. § 1126(f); *see also In re Econ. Cast Stone Co.*, 16 B.R. 647, 651 (Bankr. E.D. Va. 1981). Even if certain impaired classes of claims or interests do not accept a plan and therefore the requirements of section 1129(a)(8) are not satisfied, the plan nevertheless may be confirmed over such non-acceptance pursuant to the "cramdown" provisions of section 1129(b)(1) of the Bankruptcy

Code. As a result, the confirmation requirement contained in section 1129(a)(8) is the only section 1129(a) condition that is not necessary for confirmation of a plan of reorganization or liquidation.

129. Acceptance of a plan by an impaired class of claims or interests is determined by reference to section 1126 of the Bankruptcy Code, which identifies the members of a class that may vote on a plan and the number and amount of votes necessary for the acceptance of a plan by a class of claims or interests. In particular, section 1126 provides that a plan is accepted (a) by an impaired class of claims if the accepting class members hold at least two-thirds in dollar amount and more than one-half in number of the claims held by the class members that have cast votes on the plan; and (b) by a class of impaired interests if the class members accepting hold at least two-thirds in amount of the interests held by the class members that have cast votes on the plan. Under section 1126(g) of the Bankruptcy Code, however, impaired classes that neither receive nor retain property under the plan are deemed to have rejected the plan.

130. As discussed above, Class I and Class III were entitled to vote on the Plan and have voted overwhelmingly to accept the Plan, thus satisfying section 1126(c) of the Bankruptcy Code with respect to those classes. Classes II and IV will neither receive nor retain any property under the Plan and, therefore, are deemed to have rejected the Plan. As discussed more fully below, the Debtors have met the "cramdown" requirements in section 1129(b) of the Bankruptcy Code necessary to obtain Confirmation of the Plan notwithstanding the deemed rejection of the Plan by Classes II and IV.

I. Treatment of Priority Claims (Section 1129(a)(9)).

131. Section 1129(a)(9) of the Bankruptcy Code contains a number of requirements concerning the payment of priority claims. First, section 1129(a)(9)(A) requires that claims of a kind specified in section 507(a)(2), which gives second priority to certain administrative expenses, be paid in full in cash on the effective date of the plan. Second, section 1129(a)(9)(B) requires that claims of a kind specified in sections 507(a)(1) and 507(a)(4) through 507(a)(7) of the Bankruptcy Code – generally, wage, employee benefit and deposit claims entitled to priority – receive deferred cash payments equal, as of the effective date of the plan, to the allowed amount of such claims if the class has accepted the plan or, if the class has not accepted the plan, cash on the effective date equal to the allowed amount of such claims.

132. Sections 3.5, 3.6 and 3.7 of the Plan provide for such treatment for the Debtors' Administrative Claims, Priority Tax Claims and Priority Wage Claims. Accordingly, the Plan satisfies the requirements set forth in section 1129(a)(9) of the Bankruptcy Code with respect to the payment of these Claims.

J. Acceptance of at Least One Impaired Class (Section 1129(a)(10)).

133. Section 1129(a)(10) of the Bankruptcy Code provides:

> If a class of claims is impaired under the plan, at least one class of claims that is impaired under the plan has accepted the plan, determined without including any acceptance of the plan by any insider.

11 U.S.C. § 1129(a)(10); *see also In re Econ. Cast Stone Co.*, 16 B.R. at 651 (under section 1129(a)(10), at least one impaired class must actively accept the plan).

134. The Debtors have satisfied this requirement. Specifically, Classes I and III both overwhelmingly voted to accept the Plan. Thus, at least one Class of Claims that is Impaired under the Plan has accepted the Plan, determined without including any acceptance of the Plan

by any insider. Accordingly, the requirement of section 1129(a)(10) of the Bankruptcy Code has been met.

K. Feasibility (Section 1129(a)(11)).

135. Section 1129(a)(11) of the Bankruptcy Code provides that a plan of reorganization may be confirmed only if "[c]onfirmation of the plan is not likely to be followed by the liquidation, or the need for further financial reorganization, of the debtor or any successor to the debtor under the plan." 11 U.S.C. § 1129(a)(11); *see Multuit*, 449 B.R. at 348 (holding "proponent need not demonstrate that a plan carries a guarantee of success. Rather, a plan must 'provide[ ] for a reasonable assurance of commercial viability.'"); *In re DeLuca*, 1996 WL 910908, at *17 (Bankr. E.D. Va. Apr. 12, 1996) ("[I]t is not necessary that success be guaranteed, but only that the plan presents a workable scheme of reorganization and operation from which there may be a reasonable expectation of success."); *Walker*, 165 B.R. at 1004 (same); *In re Adamson Co., Inc.*, 42 B.R. 169, 174 (Bankr. E.D. Va. 1984) (same).

136. To satisfy section 1129(a)(11) of the Bankruptcy Code, a debtor need not warrant or prove to a mathematical certainty the future success of the plan. *See In re Whittaker Mem'l Hosp. Ass'n, Inc.*, 149 B.R. 812, 816 (Bankr. E.D. Va. 1993) (holding with respect to the debtor's obligation to provide feasibility, that "[i]t is not a blanket guarantee which is required, but rather a reasonable likelihood of success."); s*ee also Mercury Capital Corp. v. Milford Conn. Assoc., L.P.*, 354 B.R. 1, 9 (D. Conn. 2006) ("A 'relatively low threshold of proof' will satisfy the feasibility requirement." (quoting *In re Brotby*, 303 B.R. 177, 191-92 (B.A.P. 9th Cir. 2003)).

137. Rather, a plan is feasible and should be confirmed if it "offers a reasonably workable prospect of success and is not a visionary scheme." *In re Merrimack Valley Oil Co.*, 32 B.R. 485, 488 (Bankr. D. Mass. 1983).

138. Moreover, some courts have held that, where a plan proposes liquidation, section 1129(a)(11) is inapplicable. *See, e.g., In re Pero Bros. Farms, Inc.*, 90 B.R. 562, 563 (Bankr. S.D. Fla. 1988) ("The feasibility test has no application to a liquidation plan."); *Matter of 47th and Belleview Partners*, 95 B.R. 117, 120 (Bankr. W.D. Mo. 1988) ("[F]easibility, under the literal wording of section 1129(a)(11) of the Bankruptcy Code, is unnecessary to be shown when 'liquidation . . . is proposed in the plan."). Other courts, however, take a different approach and "apply the feasibility test to plans of liquidation, focusing their analysis on whether the liquidation itself, as proposed in the plan, is feasible." *In re Heritage Organization, LLC*, 375 B.R. 230, 311 (Bankr. N.D. Tex. 2007) (collecting cases).

139. The Plan is feasible because, as demonstrated in the Liquidation Analysis and the Plan itself, Delaware Street, under the terms of the settlement agreement, has agreed to pay all Allowed Administrative and Priority Claims in full and to provide funds to the general unsecured creditors. Thus, there is a reasonable probability that the provisions of the Plan will be performed, and the Plan therefore satisfies section 1129(a)(11).

L. Payment of Certain Fees (Section 1129(a)(12)).

140. Section 1129(a)(12) of the Bankruptcy Code requires that certain fees listed in 28 U.S.C. § 1930, determined by the court at the hearing on confirmation of a plan, be paid or that provision be made for their payment. Indeed, the Plan provides that all fees that become due and payable thereafter shall be paid by the applicable Liquidating Trustee pursuant to the Plan. The Hartford Liquidating Trustee is required under the Plan to pay the quarterly fees to the U.S. Trustee until the Chapter 11 Cases are closed or converted and/or the entry of final decrees. Thus, section 1129(a)(12) of the Bankruptcy Code is satisfied.

M. Continuation of Retiree Benefits (Section 1129(a)(13)).

141. Section 1129(a)(13) of the Bankruptcy Code requires that a plan provide for the continuation of retiree benefits, at levels established pursuant to section 1114 of the Bankruptcy Code, for the duration of the period that the debtor has obligated itself to provide such benefits.

142. The Debtors do not provide retiree benefits. Accordingly, the requirements of section 1129(a)(13) of the Bankruptcy Code are satisfied.

IV. THE PLAN SATISFIES THE "CRAMDOWN" REQUIREMENTS.

143. Section 1129(b) of the Bankruptcy Code, the so-called cramdown provision, provides that if all of the applicable confirmation requirements of section 1129(a) other than subsection (8) (requiring all impaired classes to accept the plan) are met, the court, on request of the plan proponent, shall confirm the plan if it does not "discriminate unfairly" and is "fair and equitable" with respect to the non-accepting impaired classes. *See* 11 U.S.C. § 1129(b)(1); *see also Bryson Props.*, 961 F.2d at 500; *In re Catron*, 186 B.R. 194, 197 (Bankr. E.D. Va. 1995); *Schwarzmann*, 203 B.R. at 923, 925; *Adamson*, 42 B.R. at 173-74.

144. Because the Holders of Claims and Interests in Classes II and IV will neither receive nor retain any property under the Plan, these Classes are deemed to have rejected the Plan. *See* 11 U.S.C. § 1126(g). As discussed below, the Debtors meet the "cramdown" requirements with respect to these Classes.

A. The Plan Does Not Unfairly Discriminate.

145. The Plan does not discriminate unfairly with respect to the Impaired Classes that have been deemed to reject the Plan. Indeed, the "unfair discrimination" standard of section 1129(b) does not prohibit all types of discrimination among holders of claims and interests; it merely prohibits unfair discrimination. *See In re Leslie Fay Cos.*, 207 B.R. at 791

n.37; *In re Rivers End Apts., Ltd.*, 167 B.R. 470, 487 (Bankr. S.D. Ohio 1994). The Bankruptcy Code does not provide a standard for determining when "unfair discrimination" exists. *See In re 203 N. LaSalle St. Ltd. P'ship*, 190 B.R. 567, 585 (Bankr. N.D. Ill. 1995) (noting "the lack of any clear standard for determining the fairness of a discrimination in the treatment of classes under a Chapter 11 plan" and that "the limits of fairness in this context have not been established"), *aff'd*, 195 B.R. 692 (N.D. Ill. 1996), *aff'd*, 126 F.3d 955 (7th Cir. 1997), *rev'd on other grounds sub nom. Bank of Am. Nat'l Trust & Sav. Ass'n v. 203 N. LaSalle St. Ltd. P'ship*, 526 U.S. 434 (1999).

146. Rather, courts typically examine the facts and circumstances of the particular case to determine whether unfair discrimination exists. *See, e.g., In re Freymiller Trucking, Inc.*, 190 B.R. 913, 916 (Bankr. W.D. Okla. 1996) (holding that a determination of unfair discrimination requires a court to "consider all aspects of the case and the totality of all the circumstances"); *In re Aztec Co.*, 107 B.R. 585, 589 (Bankr. M.D. Tenn. 1989) (noting that courts "have recognized the need to consider the facts and circumstances of each case to give meaning to the proscription against unfair discrimination").

147. The Debtors submit that there is no unfair discrimination under the Plan. Class II consists of the claims of Subordinated Secured Creditors. And, as set forth above, such creditors contractually agreed to have subordinate claims.

148. Class IV consists of Interests in the Debtors, whose Holders will not receive any distribution under the Plan. Holders of Interests in Class IV are not entitled to payment under the absolute priority rule until all senior Creditors have been paid in full. Accordingly, the Plan complies with the absolute priority rule and does not discriminate unfairly.

B. The Plan is Fair and Equitable.

149. Sections 1129(b)(2)(B)(ii) and 1129(b)(2)(C)(ii) provide that a plan is fair and equitable with respect to a class of impaired unsecured claims or interests if the plan provides that the holder of any claim or interest that is junior to the claims or interests of such class will not receive or retain any property under the plan on account of such junior claim or interest. This central tenet of bankruptcy law – the absolute priority rule – requires that if the holders of claims in a particular class receive less than full value for their claims, no holders of claims or interests in a junior class may receive property under a plan. *Norwest Bank Worthington v. Ahlers*, 485 U.S. 197, 202 (1988) (the absolute priority rule, "provides that a dissenting class of unsecured creditors must be provided for in full before any junior class can receive or retain any property [under a reorganization] plan." (citations omitted)); *203 N. LaSalle St.*, 526 U.S. at 441. *See In re Granite Broad. Corp.*, 369 B.R. 120, 140 (Bankr. S.D.N.Y. 2007) (citing *In re Exide Techs.*, 303 B.R. 48, 61 (Bankr. D. Del. 2003)); *In re Genesis Health Ventures, Inc.*, 266 B.R. 591, 612 (Bankr. D. Del. 2001).

150. The Plan satisfies the absolute priority rule with respect to all Claims and Interests. As set forth in the Plan and Disclosure Statement, no junior Holder of a Claim or Interest will receive any distribution unless the Holders of higher priority Claims receive the full value of their Claims or have consented to such treatment. The sole claimant in Class I has agreed to a partial payment of its Claim in order to permit payments to creditors in Class III. Claims in Class III are Impaired and Holders of Allowed Claims in such Classes will receive, on account of their Claims, a *pro rata* share of the Hartford Trust Assets. Holders of Class IV Interests are not entitled to receive any recovery under the absolute priority rule and will not receive or retain any Distribution or other property on account of such Interests. With regard to

Class II Claims, all Subordinated Secured Claims shall receive no distribution under the Plan because those creditors contractually agreed to subordinated claims.

151. As a result, the Debtors have met the requirements for cramdown. Accordingly, the Plan should be confirmed despite the deemed rejection by Classes II and IV.

V. ALL OBJECTIONS TO THE PLAN SHOULD BE OVERRULED.

152. As mentioned above, the MRR Group filed the only objection to the Plan to remains pending at this time.

153. The MRR Group claims that (i) the Plan improperly classifies MRR's claim in a class separate from general unsecured creditors and (ii) the Committee undervalued the potential Avoidance Actions against the Debtors' insiders and the causes of action set forth in Shareholder Suit.

154. These claims are without merit. As set forth in detail above, MRR's claim was properly classified in a separate class because it is a contractually subordinate claim and based upon the Committee's investigation, the MRR Group's contentions exaggerate both the dollar amount of the transfers at issue, and the potential recoveries therefrom, and that the proposed settlement remains advantageous to unsecured creditors relative to any possible recovery from such Avoidance Actions.

155. Moreover, the MRR Group fails to even address the fact that it is barred from bringing the Shareholder Suit due to its failure to timely file a Challenge.

156. As a result, the MRR Group's objections should be overruled.

157. Sony's objection to the Plan has been resolved. Notwithstanding any contradictory provisions in the Plan: (a) Sony may file any applications for allowance of administrative expenses it deems appropriate and in good faith, subject to the ability of any party

in interest to object (except for objections asserting that administrative claims that arose after the general proof of claim bar date are barred and/or not timely), and (b) any defenses, including the defenses of setoff and recoupment, Sony may have to any Causes of Action against Sony, including any Causes of Action transferred to the Hartford Liquidating Trust, are preserved; provided, however, that the provisions of both (a) and (b) of this paragraph shall be subject to provisions of any settlement agreement reached by and between the Debtors and/or the Hartford Liquidating Trustee on the one hand, and Sony on the other, that is approved by this Court and that is not breached by the Debtors and/or the Hartford Liquidating Trustee. Nothing in this paragraph, this Order, or the Plan, shall be deemed or construed to mean that any funds held in accounts to collateralize letters of credit issued to Sony or the proceeds of any such letters of credit are Hartford Trust Assets and all such funds, to the extent not due to Sony, shall be treated as deposit, bank, reserve, or escrow accounts distributable to Delaware Street under § 3.1 of the Plan.

VI. CONCLUSION.

158. For the foregoing reasons, the Bankruptcy Court should: (i) confirm the Plan and (ii) grant the Debtors such other and further relief as is just and proper.

Dated: September 21, 2012

Respectfully submitted,

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By: /s/ Peter A. Siddiqui

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60996854

EXHIBIT A

SUBORDINATED PROMISSORY NOTE

Original Principal Amount: $869,000.00 **May 9, 2005**

The undersigned, HARTFORD COMPUTER GROUP, INC., a Delaware corporation and successor by merger with Hartford Computer Group, Inc., a Delaware corporation and successor by merger to Hartford Computer Group, Inc., an Illinois corporation ("**Maker**"), at 2200 S. Mount Prospect Road, Des Plaines, Illinois, for value received, and intending to be legally bound hereby, promises to pay to the order of HCG Financial Services, Inc. ("**Payee**"), at such place or places as Payee may designate in writing, the principal sum of Eight Hundred Sixty-Nine Thousand and No/100 Dollars ($869,000.00) (the "**Principal Amount**"), together with interest at the rate of interest equal to 8% per annum (the "**Interest Rate**"), payable as set forth below. This Note is the "PO Note" referred to in that certain Termination and Exchange Agreement dated as May 9, 2005 by and between Maker and Payee

1. Subject to Section 8, Maker shall repay the Principal Amount by making eight (8) consecutive quarterly installments of $105,125 each, together with all then accrued and unpaid interest, commencing on September 30, 2005 and continuing on the last business day of each quarter ending thereafter until paid in full.

2. Subject always to Section 8, this Note may be prepaid in whole or in part from time to time, without premium or penalty.

3. Maker hereby represents and warrants to Payee that: (a) Maker has the corporate power and authority to execute and deliver this Note; (b) this Note is the valid and binding obligation of Maker, enforceable against Maker according to its terms, subject as to enforcement to the effect of any applicable bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforceability of creditors' rights generally, and subject further to general principles of equity (regardless of whether considered in a proceeding in equity or at law); and (c) the execution, delivery and performance of this Note does not conflict with, or result in a default under, any other agreement binding upon Maker or any of its assets.

4. It shall be an "**Event of Default**" hereunder if:

(a) Maker shall fail to pay any amount of principal, interest, fees or costs due hereunder and such failure shall continue for five (5) business days after Maker's receipt of notice from payee;

(b) Maker is or becomes insolvent, or admits in writing its inability to pay, debts as they become due, or Maker applies for, consents to or acquiesces in the appointment of a trustee, receiver or other custodian for Maker or any of its property, or makes a general assignment for the benefit of creditors, or, in the absence of such application, consent or acquiescence, a trustee, receiver or other custodian is appointed for Maker or for a substantial part of Maker's property and is not discharged within ninety (90) days, or any bankruptcy, reorganization, debt arrangement, or other case or proceeding under any bankruptcy or insolvency law is commenced in respect of Maker,

and if such case or proceeding is not commenced by Maker, it is consented to or acquiesced in by Maker or remains for ninety (90) days undismissed, or Maker takes any action to authorize, or in the furtherance of, any of the foregoing;

(c) the maturity of any debt in respect of the Superior Debt (as such term is defined in Section 8) is accelerated; or

(d) Maker fails to comply with any covenant of Maker hereunder in any material respect and, if such failure is capable of being remedied, such failure continues unremedied for more than thirty (30) business days after Maker's receipt of written notice from Payee specifying such failure.

Subject to Section 8, upon the occurrence and during the continuation of an Event of Default hereunder: (a) the entire outstanding balance of this Note shall bear interest at the default rate of two percent (2%) per annum plus the Interest Rate, (b) at the option of Payee, upon the delivery of prior written notice to Maker, the entire unpaid Principal Amount, together with all accrued and unpaid interest thereon, shall become immediately due and payable, and (c) Payee shall be entitled to exercise all rights of Payee hereunder and under applicable law, including the right to collect from Maker all sums due under this Note.

5. In addition to the other sums payable hereunder, Maker agrees, subject to Section 8, to pay to the Payee, promptly following demand, all reasonable out-of-pocket fees and expenses, including reasonable attorneys' fees and costs that may be incurred by the Payee in enforcing any of the terms hereof after an Event of Default.

6. All payments of the Principal Amount and/or interest on this Note shall be paid in lawful money of the United States of America and at the office of Payee located at 2200 S. Mount Prospect Road, Des Plaines, Illinois 60018 or at such other place as Payee or any subsequent holder of this Note (the "**Holder**") may at any time or from time to time designate in writing to the Maker.

7. Except as otherwise provided in this Note, Maker hereby waives presentment, notice of non-payment, notice of dishonor, and protest of any dishonor, and agrees that its liabilities shall not in any manner be affected by any indulgence, extension of time, renewal, waiver or modification granted or consented to by the holder hereof. Further, Maker consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by the holder hereof with respect to the payment or other provisions of this Note, and agrees that additional makers, endorsers, guarantors or sureties may become parties hereto without notice to Maker and without affecting its liability hereunder.

8. Subordination; Restrictions on Payment.

(a) Anything in this Note to the contrary notwithstanding, the obligations of Maker on or in respect of this Note (including, without limitation, the principal, interest, fees and charges on this Note) shall be subordinate and junior in right of payment, to the extent and in the manner hereinafter set forth, to all Superior Debt (as defined below).

(b) For purposes hereof, "**Superior Debt**" means all principal of, premium (if any), interest (including, without limitation, interest accruing or that would have accrued but for the filing of a bankruptcy, reorganization or other insolvency proceeding whether or not such interest constitutes an allowable claim in such proceeding) on, and any and all other fees, expense reimbursement obligations, and other amounts due pursuant to the terms of all agreements, documents and instruments providing for, creating, securing or evidencing or otherwise entered into in connection with all senior secured indebtedness arising in connection with the Amended and Restated Loan and Security Agreement dated as of December 17, 2004, between Maker, Nexicore Services, LLC ("**Nexicore**") and Delaware Street Capital Master Fund, L.P., as Lender, and its assignees ("**Lender**"), as most recently amended by that certain Waiver and Third Amendment to Amended and Restated Loan and Security Agreement dated as of May 9, 2005 by and among Maker, Nexicore, Hartford Computer Hardware, Inc., Hartford Computer Government, Inc. and the Lender (together with all prior amendments, restatements, supplements and modifications thereto from time to time, collectively, the "**Loan Agreement**"), and the documents, instruments and agreements entered into in connection therewith (the "**Senior Indebtedness**"), which Senior Indebtedness is being restructured pursuant to that certain Master Restructuring Agreement dated as of May 9, 2005 to which the Maker and Payee are parties (the "**Restructuring Agreement**"), and any related agreements, documents, certificates and instruments evidencing such subordinated secured indebtedness; and all renewals, extensions, refundings, refinancings, deferrals, restructurings, amendments and modifications of the items described above.

(c) (i) The holders of Superior Debt shall be entitled to receive payment in full in cash on all Superior Debt before the Holder of this Note is entitled to receive any payment on account of principal, interest or other amounts due (or past due) upon or in respect of this Note (other than payments permitted pursuant to Section 1), and the holders of Superior Debt shall be entitled to receive for application in payment thereof any payment or distribution of any kind or character, whether in cash, property or securities or by set-off or otherwise, which may be payable or deliverable in any such proceedings in respect of this Note.

(i) Any payment or distribution of assets of the Maker, of any kind or character, whether in cash, property or securities, to which the holder of this Note would be entitled except for the provisions of this Section 8 shall be paid or delivered by the Maker directly to the holders of Superior Debt or their duly appointed agents for application of payment according to the priorities of such Superior Debt and ratably among the holders of any class of Superior Debt, for application in payment thereof until all Superior Debt shall have been paid in full in cash.

(d) No payment of principal, interest or other amounts due (or past due) upon or in respect of this Note shall be made if there shall have occurred and be continuing or there would exist as a result of such a payment or distribution any default or event of default under any of the terms of any agreement currently in force relating to, or instrument evidencing, any Superior Debt.

(e) Any amendment or modification of the terms of this Note shall not be effective against any Person who was a holder of Superior Debt prior to or at the time of such amendment or modification unless such holder of Superior Debt so consents, which consent may be withheld for any reason or no reason at all.

(f) The holders of Superior Debt may, at any time, in their discretion, renew, amend, extend or otherwise modify the terms and provisions of Superior Debt so held or exercise any of their rights under the Superior Debt including, without limitation, the waiver of defaults thereunder and the amendment of any of the terms or provisions thereof (or any notice evidencing or creating the same), all without notice to or assent from the Holder of this Note. No compromise, alteration, amendment, renewal or other change of, or waiver, consent or other action in respect of any liability or obligation under or in respect of, any terms, covenants or conditions of the Superior Debt (or any instrument evidencing or creating the same), whether or not such compromise, alteration, amendment, renewal, change, waiver, consent or other action is in accordance with the provisions of the Superior Debt (or any instrument evidencing or creating the same), shall in any way alter or affect any of the subordination provisions of this Note.

(g) If, notwithstanding the provisions of Section 8 of this Note, any payment or distribution of any character (whether in cash, securities or other property) or any security shall be received by the Holder of this Note in contravention of this Section 8 and before all the Superior Debt shall have been paid in full in cash, such payment, distribution or security shall be held in trust for the benefit of, and shall be immediately paid over or delivered or transferred to, the holders of Superior Debt or their duly appointed agents for application of payment according to the priorities of such Superior Debt and ratably among the holders of Superior Debt. Any such payments received by the Holder of this Note and delivered to the holders of the Superior Debt shall be deemed not to be a payment on this Note for any reason whatsoever and the indebtedness under this Note shall remain as if such erroneous payment had never been paid by the Maker or received by the Holder of this Note. In the event of the failure of any Holder of this Note to endorse or assign any such payment, distribution or security, each holder of any Superior Debt is hereby irrevocably authorized to endorse or assign the same.

(h) If any payment or distribution to which any Holder of this Note would otherwise have been entitled but for the provisions of this Section 8 shall have been applied, pursuant to the provisions of this Section 8, to the payment of Superior Debt, then and in such case and to such extent, the Holder of this Note (A) following payment in full in cash of the Superior Debt (or, in the sole discretion of the holders of Superior Debt, such other form of consideration acceptable to them in their sole discretion), shall be entitled to receive any and all further payments or distributions applicable to Superior Debt, and (B) following payment in full in cash of the Superior Debt (or, in the sole discretion of the holders of Superior Debt, such other form of consideration acceptable to them in their sole discretion), shall be subrogated to the rights of the holders of the Superior Debt to receive distributions applicable to the Superior Debt, in each case until this Note shall have been paid in full in cash or such other consideration acceptable to the holder of this Note in its sole discretion. If any Holder of this Note has been subrogated to the rights of the holders of Superior Debt due to the operation of this Section 8(i), the

Maker agrees to take all such reasonable actions as are requested by such Holder of this Note in order to cause such holder to be able to obtain payments from the Maker with respect to such subrogation rights as soon as possible.

(i) The provisions of this Section 8 are solely for the purpose of defining the relative rights of the holders of Superior Debt, on the one hand, and the Holder of this Note on the other, against the Maker and its assets, and nothing herein is intended to or shall impair, as between the Maker and the Holder of this Note, the obligations of this Maker which are absolute and unconditional, to pay to the holder the Principal Amount and interest on this Note as and when they become due and payable in accordance with their terms, or is intended to or will affect the relative rights of the Holder of this Note and creditors of the Maker other than the holders of the Superior Debt, nor, except as provided in this Section 8, will anything herein or therein prevent the Holder of this Note from exercising all remedies otherwise permitted by applicable law upon default under this Note subject to the rights, if any, under this Section 8 of the holders of Superior Debt in respect of cash, property or securities of the Maker received upon the exercise of any such remedy and subject to this Section 8.

9. Payee shall not by any act of omission or commission be deemed to waive any of its rights or remedies hereunder unless such waiver is in writing and signed by Payee, and then only to the extent specifically set forth therein. The waiver of any event shall not be construed as a waiver of any other right or remedy, nor shall any single or partial exercise of any right or remedy preclude any other or further exercise thereof or of any other right or remedy.

10. Whenever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note is deemed to be invalid or unenforceable under such law, such provision shall be ineffective only to the extent of such invalidity or unenforceability without affecting the validity or enforceability of any other provision of this Note.

11. This Note shall be binding on Maker and its successors and assigns. This Note may not be transferred, assigned, pledged, sold or otherwise disposed of, whether in whole or in part, by Payee, except that Payee may transfer or assign this Note in connection with the sale of all or substantially all of Payee's assets.

12. Maker's obligations under this Note are unconditional and are not subject to any right of offset, set-off, deduction or counterclaim, however arising, and Maker waives, as a defense, counterclaim or set-off to any payment due under this Note, any defense (legal or equitable), counterclaim or set-off Maker may now or subsequently have against Payee with respect to this Note or any payments due hereunder.

13. This Note shall be construed, governed and enforced in accordance with the internal laws of the State of Illinois (including 735 ILCS 105/5-1 et seq., but otherwise without regard to conflicts of law principles). This Note is in exchange for and substitution of any and all obligations made by the Maker to the Payee in connection with and under those certain Assignment and Fulfillment Services Agreements and other related agreements and documents by and between Maker and Payee.

14. The holders of Superior Debt shall be deemed intended third party beneficiaries of the subordination and other provisions set forth in Section 8 of this Note and all other applicable provisions benefiting holders of Superior Debt.

[Signature page to follow]

IN WITNESS WHEREOF, Maker has duly executed this Subordinated Promissory Note as of the date first above written.

HARTFORD COMPUTER GROUP, INC.

By: _____

Name: Anthony R. Graffia, II

Its: Chief Executive Officer

TERMINATION AND EXCHANGE AGREEMENT

This Termination and Exchange Agreement (this "**Agreement**") is made and entered into as of the 9th day of May, 2005 by and between Hartford Computer Group, Inc., a Delaware corporation and successor by merger to Hartford Computer Group, Inc., an Illinois corporation ("**Hartford**"), and HCG Financial Services, Inc., an Illinois corporation ("**HFS**" and together with Hartford, the "**Parties**").

RECITALS:

A. Hartford and HFS are parties to those certain Assignment and Fulfillment Services Agreements and other related agreements, documents and instruments (collectively, the "**PO Obligation Documents**"), pursuant to which Hartford has incurred overdue financial obligations to HFS in the amount of $869,000 (the "**PO Debt**").

B. The Parties represent and agree that the PO Debt does not exceed $869,000.

C. In connection with the restructuring of certain indebtedness owed by Hartford, Hartford and HFS have agreed to terminate the PO Obligation Documents in exchange for Hartford issuing the PO Note (as defined below) to HFS to evidence and establish the terms of repayment for the PO Debt, all in accordance with the terms and subject to the conditions set forth in this Agreement.

AGREEMENT

NOW THEREFORE, in consideration of the foregoing Recitals, and of the mutual representations, warranties, covenants and agreements hereinafter set forth, the Parties hereby agree as follows:

1. **PO Note**. Hartford herewith delivers to HFS, and HFS hereby accepts as payment of the PO Debt, that certain Subordinated Promissory Note dated as of even date herewith made by Hartford to HFS in the principal amount of Eight Hundred Sixty-Nine Thousand and No/100 ($869,000.00) in the form previously agreed to by the parties (the "**PO Note**").

2. **Termination of Agreements and Release**. Upon receipt of the PO Note as set forth above, all of the PO Obligation Documents, the respective obligations of the Parties thereunder, and any and all guaranties or collateral granted in connection therewith (collectively, the "**Terminated Obligations**"), are hereby terminated and of no further force and effect. Each of Hartford and HFS, respectively, hereby releases, remises and forever discharges the other Party, and each of its respective officers, directors, employees, agents, attorneys, successors, executors, administrators, legal representatives, successors and assigns ("**Affiliates**"), acting in their capacity as such, from any and all manner of claims, actions, causes of action, charges, grievances, suits, damages, complaints, debts, demands, obligations, sums of money, accounts, promises, duties, controversies, judgments, contracts, costs, attorneys' fees and interest, and any and all other

liabilities, of whatever nature, whether arising in tort, contract, statute, law or equity, both known and unknown, fixed or contingent, liquidated or unliquidated, which the releasing party or now has prior to and as of the date of this Agreement, arising out of or relating to the Terminated Obligations, the transactions consummated pursuant thereto, and the actions and inactions of the Parties in connection therewith; provided, that nothing herein shall release any Party of their respective obligations under this Agreement or the PO Note; provided further, that nothing herein shall release any Affiliate acting outside their capacity as such. Each of the Parties hereto, agrees not to bring, sue, file, charge, claim any cause of action, or proceeding based upon any of the claims released hereunder, and further covenants and agrees that this Agreement is, will constitute and may be pleaded as, a bar to any such claim, action, cause of action or proceeding.

3. **Representations and Warranties**.

a) Hartford hereby represents, warrants and covenants to HFS as follows: This Agreement and the PO Note each has been duly and validly authorized by all necessary corporate action by Hartford and each is a valid and binding obligation of Hartford, enforceable against Hartford in accordance with its respective terms. The execution and delivery of this Agreement and the PO Note, and consummation of the transactions contemplated hereby and thereby, do not conflict in any way with the terms of, and will not cause the termination or breach of any agreement, note, bond, mortgage, indenture, license, lease or other instrument to which Hartford is a party or by which Hartford is bound or with any applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court to which Hartford is subject. The execution, delivery and performance of this Agreement or the PO Note by Hartford require no consents of third parties.

b) HFS represents and warrants to Hartford as follows: All corporate proceedings and actions on the part of HFS necessary to authorize, the execution, delivery and performance of this Agreement and the consummation of the transactions contemplated by this Agreement have been taken. This Agreement is the valid and binding obligation of HFS, enforceable against HFS in accordance with its terms. The execution and delivery of this Agreement and the consummation of the transactions contemplated hereby do not conflict with the terms of any agreement or other instrument to which HFS is a party or by which any of its property is bound or with any applicable law, rule, regulation, judgment, order or decree of any government, governmental instrumentality or court to which any of them is subject. The execution, delivery and performance of this Agreement or the PO Note by HFS requires no consents of third parties.

4. **Savings Clause**. If any provision of this Agreement shall be found by a court to be invalid or unenforceable, in whole or in part, then such provision shall be construed and/or modified or restricted to the extent and in the manner necessary to render the same valid and enforceable, or shall be deemed excised from this Agreement, as the case may require, and this Agreement shall be construed and enforced to the maximum extent permitted by law, as if such provision had been originally incorporated herein as so modified or restricted, or as if such provision had not been originally incorporated herein, as the case may be.

5. Further Assurance and Assistance. After the date hereof, each party from time to time shall, without further consideration, execute and deliver such further documents and instruments and take such other actions as may be reasonably requested by any other party hereto in order to carry out the intents and purposes of this Agreement.

6. Notices. Unless otherwise specifically provided in this Agreement, all notices, requests, consents, approvals, agreements or other communications required or permitted to be given under this Agreement shall be in writing and shall be delivered by hand or sent by facsimile transmission with subsequent written confirmation by U.S. mail, or by registered or certified mail, postage prepaid, return receipt requested, or recognized overnight courier, next business day charges prepaid, addressed to the respective addresses of the Parties as follows:

If to HFS:
1610 Colonial Parkway
Inverness, Illinois 60067
Facsimile: 847-934-3441

If to Hartford:
Hartford Computer Group, Inc.
2200 South Mount Prospect Road
Des Plaines, Illinois 60018
Attn: Anthony R. Graffia, II
Facsimile: 847-934-3441

or to such other address as any party shall designate for himself or itself by notice to the other Parties given in accordance herewith. Any such notice or other communication shall be deemed to have been given or made upon delivery, if delivered personally or by facsimile transmission during business hours, four (4) business days after mailing, if mailed, or one (1) business day after delivery to the courier, if delivered by overnight courier service.

7. Miscellaneous. This Agreement encompasses the entire understanding among the Parties with respect to the terms of this Agreement and hereby supersedes any and all prior oral and written agreements heretofore made between the Parties with respect to the terms of this Agreement. No change, modification or waiver of any provisions of this Agreement shall be valid or binding unless it is in writing and signed by the Parties intended to be bound thereby. No waiver of any breach, term or condition shall constitute a subsequent waiver of the same or any other breach, term or condition. This Agreement shall be governed by and construed exclusively in accordance with laws of the State of Illinois without regard to the choice of law principles thereof. This Agreement shall be binding upon and inure to the benefit of the Parties hereto and their respective successors, heirs, and permitted assigns. Each Party shall pay its respective expenses incurred in connection with this Agreement and the transactions contemplated hereby. For the convenience of the Parties and to facilitate execution, this Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same document.

[Signature page to follow]

IN WITNESS WHEREOF, the Parties have caused this Agreement to be executed as of the day and year first above written.

HARTFORD COMPUTER GROUP, INC.

By: _____
Name: Anthony R. Graffia, II
Its: Chief Executive Officer

HCG FINANICAL SERVICES, INC.

By: _____
Name: _____
Its: _____

IN WITNESS WHEREOF, the parties have caused this Agreement to be executed as of the day and year above written.

HARTFORD COMPUTER GROUP, INC.

By: _____
Name: Anthony R. Graffia, II
Its: Chief Executive Officer

HCG FINANCIAL SERVICES, INC.

By: _____, V.P.

EXHIBIT B

INTERCREDITOR AGREEMENT

This **INTERCREDITOR AGREEMENT** (this *"Agreement"*) is entered into as of December 17, 2004 among **HARTFORD COMPUTER GROUP, INC.**, an Illinois corporation, (*"Hartford"*), **NEXICORE SERVICES, LLC**, a Florida limited liability company (together with Hartford, *"Borrowers"*), **MRR VENTURE LLC**, an Illinois limited liability company (*"MRR"*), **ARG INVESTMENTS**, an Illinois partnership (together with MRR, the "*Shareholder Lenders*"), and **DELAWARE STREET CAPITAL MASTER FUND, L.P.**, a Cayman Islands exempt limited partnership (*"DSC"*).

WHEREAS, the Shareholder Lenders have each made a $1,000,000 loan to Borrowers pursuant to Subordinated Promissory Notes dated as of December 15, 2004 (the "*Shareholder Notes*") (collectively, the Shareholder Notes and the other documents executed in connection with them shall be referred to herein as the "*Shareholder Debt Instruments*");

WHEREAS, the Borrowers have entered into that certain Loan and Security Agreement dated as of February 3, 2004 (the *"Original Loan and Security Agreement"*), with LaSalle Bank National Association ("*LaSalle*") and which provided for revolving loans in an amount up to $18,000,000 (the "*Revolving Loan*") and DSC wishes to assume LaSalle's obligations under the Original Loan and Security Agreement;

WHEREAS, DSC and the Borrowers intend to amend and restate the Original Loan and Security Agreement (the *"DSC Loan Agreement"*) in order to make a $1,000,000 Term A Loan ("*Term A Loan*") and a $2,000,000 Term B Loan ("*Term B Loan*") to Borrowers which loans (including the existing revolving loans) will be evidenced by Notes of even date herewith (the *"DSC Notes"*) (collectively, the DSC Notes and the DSC Loan Agreement shall be referred to herein as the *"DSC Debt Instruments"*);

WHEREAS, each of the Shareholder Lenders and DSC is desirous of having each of the other extend and/or continue the extension of credit to Borrowers from time to time;

WHEREAS, the extension and/or continued extension of credit, as aforesaid, by each of the Shareholder Lenders and DSC is necessary or desirable to the conduct and operation of the business of Borrowers, and will inure to the financial benefit of each of the Shareholder Lenders and DSC.

NOW, THEREFORE, in consideration of the extension and/or continued extension of credit by each of the Shareholder Lenders and DSC to Borrowers and for other good and valuable consideration to the Shareholder Lenders and DSC, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

(A) the Shareholder Lenders subordinate the principal, interest and any other obligations due under the Shareholder Debt Instruments (collectively, the *"Subordinate Debt"*) to the principal, interest and any other obligations relating to

the Term A Loan and the Revolving Loan due under the DSC Debt Instruments (collectively, the *"Senior Debt"*);

(B) the Shareholder Lenders agree: (i) not to ask for or receive from Borrowers or any other person or entity any security for the Subordinate Debt not specifically granted by the Subordinate Debt Instruments which does not also secure the Senior Debt; (ii) to subordinate all security interests, liens, encumbrances and claims, whether now existing or hereafter arising, which in any way secure the payment of the Subordinate Debt (the *"Shareholder Lender's Collateral"*) to all security interests, liens, encumbrances and claims, whether now existing or hereafter arising, which in any way secure the payment of the Senior Debt (the *"DSC's Collateral"*); (iii) that they will not take any action to enforce any of their remedies on the Shareholder Lenders' Collateral; (iv) agree that in the event DSC forecloses or realizes upon or enforces any of its rights with respect to DSC's Collateral, the Shareholder Lenders shall, upon demand, execute such terminations, partial releases and other documents as DSC requests in its sole discretion to release the Shareholder Lenders' liens upon such DSC's Collateral; and (v) agree that they shall have no right to possession of any assets included in the Shareholder Lenders' Collateral or the DSC's Collateral, whether by judicial action or otherwise, in each case unless and until all the Senior Debt has been paid in full and all obligations arising in connection therewith have been discharged;

(C) the Shareholder Lenders agree to instruct Borrowers not to pay, and agree not to accept payment of, or assert, demand, sue for or seek to enforce against Borrowers or any other person or entity, by setoff or otherwise, all or any portion of the Subordinated Debt unless and until the Senior Debt has been paid in full and all obligations arising in connection therewith have been discharged; provided, however, that prior to the occurrence of an Event of Default under DSC Debt Instruments, the Shareholder Lenders may receive the regularly scheduled payments of interest provided for in the current version of the Shareholder Debt Instruments as set forth on Schedule A hereto;

(D) the Shareholder Lenders (i) subrogate DSC to the Subordinate Debt and the Shareholder Lender's Collateral; (ii) irrevocably authorize DSC (a) to collect, receive, enforce and accept any and all sums or distributions of any kind that may become due, payable or distributable on or in respect of the Subordinate Debt or the Shareholder Lender's Collateral, whether paid by the Borrowers or paid or distributed in any liquidation, bankruptcy, arrangement, receivership, assignment, reorganization or dissolution proceeds or otherwise, and (b) in DSC's sole discretion, to make and present claims therefor in, and taken such other actions as DSC deems necessary or advisable in connection with, such proceedings, either in DSC's name or in the name of the Shareholder Lenders; and (c) agree that upon the written request of DSC they will promptly assign, endorse, and deliver to and deposit with DSC all agreements, instruments and documents evidencing the

Subordinate Debt, including, without limitation, the Shareholder Debt Instruments; in each case until all the Senior Debt has been paid in full and all obligations arising in connection therewith have been discharged;

(E) the Shareholder Lenders agree to receive and hold in trust for and promptly turn over to DSC, in the form received (except for the endorsement or assignment by the Shareholder Lenders where necessary), any sums at any time paid to, or received by, the Shareholder Lenders in violation of the terms of this Agreement and to reimburse DSC for all costs, including reasonable attorney's fees, incurred by DSC in the course of collecting said sums should the Shareholder Lenders fail to voluntarily turn the same over to DSC as herein required. If the Shareholder Lenders fail to endorse or assign to DSC any items of payment received by the Shareholder Lenders on account of the Subordinate Debt, the Shareholder Lenders hereby irrevocably make, constitute and appoint DSC (and all persons designated by DSC for that purpose) as the Shareholder Lenders' true and lawful attorney and agent-in-fact, to make such endorsement or assignment in the Shareholder Lenders' names;

(F) the Shareholder Lenders agree that they shall not modify or amend any agreement, instrument or document evidencing or securing the Subordinate Debt, including without limitation the Subordinate Debt Instruments, without the prior written consent of DSC;

(G) the Shareholder Lenders (i) agree that, notwithstanding the time, order or method of attachment or perfection, the liens and security interests on the collateral which secure the Shareholder Debt Obligations shall be equal in all respects and at all times to the liens and security interests of DSC on the collateral which secures the principal, interest and any other obligations relating to the Term B Loan due under the DSC Debt Instruments (the "*Term B Obligations*") and (ii) acknowledge (for purposes of clarity) that the Term B Obligations are pari passu in right of payment with the Shareholder Debt Obligations; and

(H) DSC (i) agrees that, notwithstanding the time, order or method of attachment or perfection, the liens and security interests on the collateral which secures the Term B Obligations shall be equal in all respects at all times to the liens and security interests of the Shareholder Lenders on the collateral which secures the Shareholder Debt Obligations provided that the liens and security interests of the Shareholder Lenders are legally valid and enforceable; to the extent that the liens and security interests of the Shareholder Lenders are defective, set aside or subordinated in any manner, this provision shall not be effective and (ii) acknowledges (for purposes of clarity) that the Shareholder Debt Obligations are pari passu in right of payment with the Term B Obligations provided that the Shareholder Debt Obligations are legally valid and enforceable; to the extent that the

Shareholder Debt Obligations are defective, set aside or subordinated in any manner, this provision shall not be effective.

The Shareholder Lenders represent and warrant to DSC that the Shareholder Lenders have not assigned or otherwise transferred the Subordinate Debt or the Shareholder Lenders' Collateral, or any interest therein to any person or entity, that the Shareholder Lenders will make no such assignment or other transfer thereof, and that all agreements, instruments and documents evidencing the Subordinate Debt and the Shareholder Lenders' Collateral will be endorsed with proper notice of this Agreement as instructed below. The Shareholder Lenders will promptly deliver to DSC a certified copy of the Subordinate Debt Instruments, as well as certified copies of all other agreements, instruments and documents hereafter evidencing any Subordinate Debt, in each case showing such endorsement.

Until the Senior Debt is paid in full in cash, each of the Shareholder Debt Instruments at all times shall contain in a conspicuous manner a legend stating substantially as follows:

> The obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Intercreditor Agreement (*the "Intercreditor Agreement"*) dated as of December 17, 2004, among Delaware Street Capital Master Fund, L.P., a Cayman Islands exempt limited partnership ("*DSC*"), Hartford Computer Group, Inc., an Illinois corporation ("*Hartford*"), Nexicore Services, LLC, a Florida limited liability company (together with Hartford, the "*Borrowers*"), MRR Venture LLC, an Illinois limited liability company, and ARG Investments, an Illinois partnership, to the obligations (*including interest*) owed by Borrowers to the holders of all of the notes issued pursuant to that certain Amended and Restated Loan and Security Agreement dated as of December 16, 2004, between Borrowers and DSC, as such Agreement has been and hereafter may be supplemented, modified, restated or amended from time to time; and each holder hereof, by its acceptance hereof, shall be bound by the provisions of the Intercreditor Agreement.

The Shareholder Lenders expressly waive all notice of the acceptance by DSC of the subordination and other provisions of this Agreement and all notices not specifically required pursuant to the terms of this Agreement, and the Shareholder Lenders expressly waive reliance by DSC upon the subordination and other provisions of this Agreement as herein provided. The Shareholder Lenders consent and agree that all Senior Debt shall be deemed to have been made, incurred and/or continued at the request of the Shareholder Lenders and in reliance upon this Agreement. The Shareholder Lenders agree that DSC has made no warranties or representations with respect to the due execution, legality, validity, completeness or enforceability of the documents, instruments and agreements evidencing the Senior Debt, that DSC shall be entitled to manage and supervise its financial arrangements with Borrowers in accordance with its usual practices, without impairing or affecting this Agreement, and that DSC shall have no liability to the Shareholder Lenders, and the Shareholder Lenders hereby waive any claim which it may now or hereafter have against DSC arising out of any and all actions which DSC takes or omits to take

(including without limitation actions with respect to the creation, perfection or continuation of liens or security interests in any existing or future DSC's Collateral, actions with respect to the occurrence of an event of default under any documents, instruments or agreements evidencing the Senior Debt, actions with respect to the foreclosure upon, sale, release, or depreciation of, or failure to realize upon, any of DSC's Collateral and actions with respect to the collection of any claim for all or any part of the Senior Debt from any account debtor, guarantor or other person or entity) with respect to the documents, instruments and agreements evidencing the Senior Debt or to the collection of the Senior Debt or the valuation, use, protection or release of DSC's Collateral. Without limiting the generality of the foregoing, the Shareholder Lenders waive the right to assert the doctrine of marshalling with respect to any of the DSC's Collateral, and consent and agree that DSC may proceed against any or all of the DSC's Collateral in such order as DSC shall determine in its sole discretion.

The Shareholder Lenders agree that DSC, at any time and from time to time hereafter, may enter into such agreements with Borrowers as DSC may deem proper extending the time of payment of or renewing or otherwise altering the terms of all or any of the Senior Debt or affecting any of DSC's Collateral, and may sell or surrender or otherwise deal with any of DSC's Collateral, and may release any balance of funds of Borrowers with DSC, without notice to the Shareholder Lenders and without in any way impairing or affecting this Agreement.

Borrowers hereby consent to the foregoing Agreement (and the terms thereof) and agrees to abide thereby and to keep, observe and perform the several matters and things therein intended to be kept, observed and performed by them, and specifically agrees not to make any payments contrary to the terms of said Agreement. A breach of any of the terms and conditions of this paragraph or this Agreement shall constitute an "Event of Default" under the Senior Loan Agreement.

This Agreement shall be irrevocable and shall constitute a continuing agreement of subordination and shall be binding on the Shareholder Lenders and Borrowers and their respective successors and assigns, and shall inure to the benefit of DSC, its successors and assigns until all of the Senior Debt has been paid in full and all obligations arising in connection therewith have been discharged. DSC may continue, without notice to the Shareholder Lenders, to lend monies, extend credit and make other accommodations to or for the account of Borrowers on the faith hereof. The Shareholder Lenders hereby agree that all payments received by DSC may be applied, reversed, and reapplied, in whole or in part, to any of the Senior Debt, without impairing or affecting this Agreement.

The Shareholder Lenders hereby assume responsibility for keeping informed of the financial condition of Borrowers, any and all endorsers and any and all guarantors of the Senior Debt and the Subordinate Debt and of all other circumstances bearing upon the risk of nonpayment of the Senior Debt and the Subordinate Debt that diligent inquiry would reveal, and the Shareholder Lenders hereby agree that DSC shall have no duty to advise the Shareholder Lenders of information known to DSC regarding such condition or any such circumstances or to undertake any investigation not a part of its regular business routine. If DSC, in its sole discretion, undertakes, at

any time or from time to time, to provide any information of the type described herein to the Shareholder Lenders, DSC shall be under no obligation to subsequently update any such information or to provide any such information to the Shareholder Lenders on any subsequent occasion.

No waiver shall be deemed to be made by DSC of any of its rights hereunder unless the same shall be in writing signed on behalf of DSC and each such waiver, if any, shall be a waiver only with respect to the specific matter or matters to which the waiver relates and shall in no way impair the rights of DSC or the obligations of the Shareholder Lenders to DSC in any other respect at any other time.

THIS AGREEMENT SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS.

ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT SHALL BE LITIGATED IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS. THE PARTIES HEREBY CONSENT AND SUBMIT TO THE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SAID CITY AND STATE. THE PARTIES HEREBY WAIVE ANY RIGHT THEY MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST IT IN ACCORDANCE WITH THIS PARAGRAPH.

EACH PARTY HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT.

[Signature pages to follow]

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

HARTFORD COMPUTER GROUP, INC.,
an Illinois corporation

By: _____
Name: Anthony R Graffeo II
Title: President

NEXICORE SERVICES, LLC,
a Florida limited liability company

By: _____
Name: Anthony R Graffeo II
Title: Manager

DELAWARE STREET CAPITAL MASTER FUND, L.P.,
a Delaware limited partnership

By: _____
Name: _____
Title: _____

MRR VENTURE LLC,
an Illinois limited liability company

By: _____
Name: Christopher T. Lorenz
Title: Manager

ARG INVESTMENTS,
an Illinois general partnership

By: _____
Name: Anthony R Graffeo II
Title: Manager

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

HARTFORD COMPUTER GROUP, INC.,
an Illinois corporation

By: _____
Name: _____
Title: _____

NEXICORE SERVICES, LLC,
a Florida limited liability company

By: _____
Name: _____
Title: _____

DELAWARE STREET CAPITAL MASTER FUND, L.P.,
a Delaware limited partnership

By: P. Gupta
Name: _____
Title: _____

Prashant Gupta
CFO, DSC Advisors, L.P.
as Investment Manager to
Delaware Street Capital Master Fund, L.P.

MRR VENTURE LLC,
an Illinois limited liability company

By: _____
Name: _____
Title: _____

ARG INVESTMENTS,
an Illinois general partnership

By: _____
Name: _____
Title: _____

COPY

TERM LOAN NOTE

$1,000,000.00 Date: December 15, 2004
Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, **HARTFORD COMPUTER GROUP, INC.**, an Illinois corporation ("*Borrower*"), **HEREBY PROMISES TO PAY** to the order of **MRR VENTURE, LLC** ("*Lender*"), at its address at 1610 Colonial Parkway, Inverness, IL 60067, or at such other place as Lender may designate from time to time in writing, in lawful money of the United States of America and in immediately available funds, the amount of One Million Dollars and No/100 Dollars (*$1,000,000.00*) or, if less, the aggregate unpaid amount of all Term Loan made to the undersigned under the "Loan Agreement" (*as hereinafter defined*). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Loan Agreement.

This Term Loan Note (this "*Note*") is the promissory note issued pursuant to that certain Loan and Security Agreement dated as of the date hereof by and among Borrower, Nexicore Services, LLC and the Lender (*as amended from time to time, the "Loan Agreement"*) to evidence the Term Loan and is entitled to the benefit and security of the Loan Agreement. Reference is hereby made to the Loan Agreement for a statement of all of the terms and conditions under which the Term Loan evidenced hereby are made and are to be repaid. The occurrence of an "Event of Default" (*as defined in the Loan Agreement*) shall constitute a default under this Note. Reference is also made to the Loan Agreement for a statement of Lender's remedies upon the occurrence of an Event of Default. The terms and conditions of the Loan Agreement are incorporated herein by reference in their entirety. The date and amount of each Term Loan made by Lender to Borrower, the rates of interest applicable thereto and each payment made on account of the principal thereof, shall be recorded by Lender on its books; provided that the failure of Lender to make any such recordation shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Loan Agreement or this Note in respect of the Term Loan made by Lender to Borrower.

The principal amount of the indebtedness evidenced hereby shall be payable in the amounts and on the dates specified in the Loan Agreement. Interest thereon shall be paid until such principal amount is paid in full at such interest rates and at such times, and pursuant to such calculations, as are specified in the Loan Agreement.

If any payment on this Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

Upon and after the occurrence of any Event of Default, this Note may, as provided in the Loan Agreement, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

Time is of the essence of this Note. Demand, presentment, protest and notice of nonpayment and protest are hereby waived by Borrower.

It is the intent of the parties that the rate of interest and other charges to the Undersigned (as defined below) under this Note shall be lawful; therefore, if for any reason the interest and other charges payable hereunder are found by a court of competent jurisdiction, in a final determination, to exceed the limit which Lender may lawfully charge the Undersigned, then the obligation to pay interest or other charges shall automatically be reduced to such limit and, if any amount in excess of such limit shall have been paid, then such amount shall be refunded to the Undersigned.

The principal and all accrued interest hereunder may be prepaid by the Undersigned, in part or in full, at any time; provided, however, that the Undersigned shall pay a prepayment fee as provided in the Loan Agreement.

The Undersigned waives the benefit of any law that would otherwise restrict or limit Lender, or any affiliate of Lender, in the exercise of its right, which is hereby acknowledged, to set-off against the Liabilities, without notice and at any time hereafter, any indebtedness matured or unmatured owing from Lender, or any affiliate of Lender, to the Undersigned. The Undersigned waives every defense, counterclaim or setoff which the Undersigned may now have or hereafter may have to any action by Lender in enforcing this Note and/or any of the other Liabilities (as defined in the Loan Agreement), or in enforcing Lender's rights in the Collateral (as defined in the Loan Agreement, hereinafter, the "Collateral") and ratifies and confirms whatever Lender may do pursuant to the terms hereof and of the Loan Agreement and with respect to the Collateral and agrees that Lender shall not be liable for any error in judgment or mistakes of fact or law.

Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or be invalid under such law, such provision shall be severable, and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Note. If more than one party shall execute this Note, the term "Undersigned" as used herein shall mean all parties signing this Note, and each one of them, and all such parties, their respective heirs, executors, administrators, successors and assigns, shall be jointly and severally obligated hereunder.

To induce the Lender to make the loan evidenced by this Note, the Undersigned (i) irrevocably agrees that, subject to Lender's sole and absolute election, all actions arising directly or indirectly as a result or in consequence of this Note or any other agreement with the Lender, or the Collateral, shall be instituted and litigated only in courts having situs in the City of Chicago, Illinois (ii) hereby consents to the exclusive jurisdiction and venue of any State or Federal Court located and having its situs in said city; and (iii) waives any objection based on forum non-conveniens. IN ADDITION, LENDER AND THE UNDERSIGNED HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS NOTE, THE LIABILITIES, THE COLLATERAL, ANY ALLEGED TORTIOUS

CONDUCT BY THE UNDERSIGNED OR LENDER OR WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND LENDER. In addition, the Undersigned agrees that all service of process shall be made as provided in the Loan Agreement.

This Note is submitted by Borrower to Lender at Lender's principal place of business and shall be deemed to have been made thereat. This Note shall be governed and controlled by the laws of the State of Illinois as to interpretation, enforcement, validity, construction, effect, choice of law and in all other respects.

The obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Intercreditor Agreement (*the "Intercreditor Agreement"*) dated as of December __, 2004, among Delaware Street Capital Master Fund, L.P., a Cayman Islands exempt limited partnership ("*DSC*"), Hartford Computer Group, Inc., an Illinois corporation (*"Hartford"*), Nexicore Services, LLC, a Florida limited liability company (together with Hartford, the "*Borrowers*"), MRR Venture LLC, an Illinois limited liability company, and ARG Investments, an Illinois partnership, to the obligations (*including interest*) owed by Borrowers to the holders of all of the notes issued pursuant to that certain Amended and Restated Loan and Security Agreement dated as of December [__], 2004, between Borrowers and DSC, as such Agreement has been and hereafter may be supplemented, modified, restated or amended from time to time; and each holder hereof, by its acceptance hereof, shall be bound by the provisions of the Intercreditor Agreement.

[SIGNATURE PAGE TO FOLLOW]

HARTFORD COMPUTER GROUP, INC.
an Illinois corporation

By: _____
Name: _____
Title: _____

COPY

COPY

TERM LOAN NOTE

$1,000,000.00 Date: December 15, 2004
Chicago, Illinois

FOR VALUE RECEIVED, the undersigned, **HARTFORD COMPUTER GROUP, INC.,** an Illinois corporation (*"Borrower"*), **HEREBY PROMISES TO PAY** to the order of **ARG INVESTMENTS** , an Illinois general partnership (*"Lender"*), at its address at 1610 Colonial Parkway, Inverness, IL 60067, or at such other place as Lender may designate from time to time in writing, in lawful money of the United States of America and in immediately available funds, the amount of One Million Dollars and No/100 Dollars (*$1,000,000.00*) or, if less, the aggregate unpaid amount of all Term Loan made to the undersigned under the "Loan Agreement" (*as hereinafter defined*). All capitalized terms used but not otherwise defined herein have the meanings given to them in the Loan Agreement.

This Term Loan Note (this "*Note*") is the promissory note issued pursuant to that certain Loan and Security Agreement dated as of the date hereof by and among Borrower, Nexicore Services, LLC and the Lender (*as amended from time to time, the "Loan Agreement"*) to evidence the Term Loan and is entitled to the benefit and security of the Loan Agreement. Reference is hereby made to the Loan Agreement for a statement of all of the terms and conditions under which the Term Loan evidenced hereby are made and are to be repaid. The occurrence of an "Event of Default" (*as defined in the Loan Agreement*) shall constitute a default under this Note. Reference is also made to the Loan Agreement for a statement of Lender's remedies upon the occurrence of an Event of Default. The terms and conditions of the Loan Agreement are incorporated herein by reference in their entirety. The date and amount of each Term Loan made by Lender to Borrower, the rates of interest applicable thereto and each payment made on account of the principal thereof, shall be recorded by Lender on its books; provided that the failure of Lender to make any such recordation shall not affect the obligations of Borrower to make a payment when due of any amount owing under the Loan Agreement or this Note in respect of the Term Loan made by Lender to Borrower.

The principal amount of the indebtedness evidenced hereby shall be payable in the amounts and on the dates specified in the Loan Agreement. Interest thereon shall be paid until such principal amount is paid in full at such interest rates and at such times, and pursuant to such calculations, as are specified in the Loan Agreement.

If any payment on this Note becomes due and payable on a day other than a Business Day, the maturity thereof shall be extended to the next succeeding Business Day and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension.

Upon and after the occurrence of any Event of Default, this Note may, as provided in the Loan Agreement, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

Time is of the essence of this Note. Demand, presentment, protest and notice of nonpayment and protest are hereby waived by Borrower.

It is the intent of the parties that the rate of interest and other charges to the Undersigned (as defined below) under this Note shall be lawful; therefore, if for any reason the interest and other charges payable hereunder are found by a court of competent jurisdiction, in a final determination, to exceed the limit which Lender may lawfully charge the Undersigned, then the obligation to pay interest or other charges shall automatically be reduced to such limit and, if any amount in excess of such limit shall have been paid, then such amount shall be refunded to the Undersigned.

The principal and all accrued interest hereunder may be prepaid by the Undersigned, in part or in full, at any time; provided, however, that the Undersigned shall pay a prepayment fee as provided in the Loan Agreement.

The Undersigned waives the benefit of any law that would otherwise restrict or limit Lender, or any affiliate of Lender, in the exercise of its right, which is hereby acknowledged, to set-off against the Liabilities, without notice and at any time hereafter, any indebtedness matured or unmatured owing from Lender, or any affiliate of Lender, to the Undersigned. The Undersigned waives every defense, counterclaim or setoff which the Undersigned may now have or hereafter may have to any action by Lender in enforcing this Note and/or any of the other Liabilities (as defined in the Loan Agreement), or in enforcing Lender's rights in the Collateral (as defined in the Loan Agreement, hereinafter, the "Collateral") and ratifies and confirms whatever Lender may do pursuant to the terms hereof and of the Loan Agreement and with respect to the Collateral and agrees that Lender shall not be liable for any error in judgment or mistakes of fact or law.

Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or be invalid under such law, such provision shall be severable, and be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Note. If more than one party shall execute this Note, the term "Undersigned" as used herein shall mean all parties signing this Note, and each one of them, and all such parties, their respective heirs, executors, administrators, successors and assigns, shall be jointly and severally obligated hereunder.

To induce the Lender to make the loan evidenced by this Note, the Undersigned (i) irrevocably agrees that, subject to Lender's sole and absolute election, all actions arising directly or indirectly as a result or in consequence of this Note or any other agreement with the Lender, or the Collateral, shall be instituted and litigated only in courts having situs in the City of Chicago, Illinois (ii) hereby consents to the exclusive jurisdiction and venue of any State or Federal Court located and having its situs in said city; and (iii) waives any objection based on forum non-conveniens. IN ADDITION, LENDER AND THE UNDERSIGNED HEREBY WAIVE TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS NOTE, THE LIABILITIES, THE COLLATERAL, ANY ALLEGED TORTIOUS

CONDUCT BY THE UNDERSIGNED OR LENDER OR WHICH IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN THE UNDERSIGNED AND LENDER. In addition, the Undersigned agrees that all service of process shall be made as provided in the Loan Agreement.

This Note is submitted by Borrower to Lender at Lender's principal place of business and shall be deemed to have been made thereat. This Note shall be governed and controlled by the laws of the State of Illinois as to interpretation, enforcement, validity, construction, effect, choice of law and in all other respects.

The obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Intercreditor Agreement (*the "Intercreditor Agreement"*) dated as of December __, 2004, among Delaware Street Capital Master Fund, L.P., a Cayman Islands exempt limited partnership ("*DSC*"), Hartford Computer Group, Inc., an Illinois corporation (*"Hartford"*), Nexicore Services, LLC, a Florida limited liability company (together with Hartford, the "*Borrowers*"), MRR Venture LLC, an Illinois limited liability company, and ARG Investments, an Illinois partnership, to the obligations (*including interest*) owed by Borrowers to the holders of all of the notes issued pursuant to that certain Amended and Restated Loan and Security Agreement dated as of December [__], 2004, between Borrowers and DSC, as such Agreement has been and hereafter may be supplemented, modified, restated or amended from time to time; and each holder hereof, by its acceptance hereof, shall be bound by the provisions of the Intercreditor Agreement.

[SIGNATURE PAGE TO FOLLOW]

HARTFORD COMPUTER GROUP, INC.
an Illinois corporation

By: _____
Name: _____
Title: _____

LOAN AND SECURITY AGREEMENT

among

ARG INVESTMENTS, LLC & MRR VENTURE LLC

as Lender,

and

HARTFORD COMPUTER GROUP, INC.

and

NEXICORE SERVICES, LLC,

AS BORROWERS

DATED AS OF DECEMBER 17, 2004

TABLE OF CONTENTS

LIST OF EXHIBITS AND SCHEDULES

ARG INVESTMENTS, LLC & MRR VENTURE LLC

SHAREHOLDER LOAN AND SECURITY AGREEMENT

THIS SHAREHOLDER LOAN AND SECURITY AGREEMENT (*as further amended, supplemented or otherwise modified from time to time, this "Agreement"*) made this 17th day of December, 2004, by and between **ARG INVESTMENTS, LLC** an Illinois general partnership **& MRR VENTURE LLC** an Illinois limited liability company (collectively *"Lender"*), **HARTFORD COMPUTER GROUP, INC.**, an Illinois corporation, having its principal place of business at 2200 S. Mount Prospect Road, Des Plaines, Illinois 60017 (*"HCG"*) and **NEXICORE SERVICES, LLC**, a Florida limited liability company, having its principal place of business at 7916 Evolutions Way, New Port Richey, Florida 34655 (*"NSL"* and collectively with HCG, the *"Borrowers"* and individually, the *"Borrower"*).

WITNESSETH:

WHEREAS, Borrowers and LaSalle Bank National Association (**"Original Lender"**) entered into a Loan and Security Agreement dated as of February 3, 2004 (as amended, restated, supplemented or otherwise modified through the date hereof, the **"Original Loan Agreement"**) and certain related documents (together with the Original Loan Agreement, as amended, supplemented or otherwise modified through the date hereof, the **"Original Loan Documents"**), pursuant to which, among other things, Original Lender (i) agreed to make revolving loans to the Borrowers in an amount up to $18,000,000 and (ii) was granted a lien in substantially all assets of the Borrowers;

WHEREAS, Original Lender entered into a certain Assignment and Assumption Agreement dated as of even date herewith (as amended, supplemented or otherwise modified through the date hereof, the **"Assignment and Assumption Agreement"**) pursuant to which the Original Lender assigned all of its rights and interests under the Original Loan Documents to **Delaware Street Capital Master Fund, LLP, ("Delaware")** and the Borrowers amended and restated the Original Loan Documents to include term loans from Delaware to Borrowers (the **"Amended Loan Documents");**

WHEREAS, Borrowers entered into a certain Intercreditor Agreement (the **"Intercreditor Agreement"**) with the Lender and Delaware dated as of even date herewith pursuant to which (i) all the Borrowers' obligations under this Agreement are subordinate to the Borrower's obligations relating to Delaware's Revolving Loans and Term A Loan (as defined in the Amended Loan Documents) and (ii) the liens securing the Borrowers' obligations under this Agreement will each be equal in all respects to the liens securing Delaware's Term B Loan (as defined in the Amended Loan Documents);

NOW, THEREFORE, in consideration of the Loans (including any Loan by renewal or extension) made to Borrowers by Lender, and for other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged by Borrowers, the parties agree as follows:

ARTICLE 1

DEFINITIONS.

Section 1.1 Definitions. In this Agreement the following terms shall have the following meanings:

"Account", "Account Debtor", "Chattel Paper", "Commercial Tort Claims", "Deposit Accounts", "Documents", "Electronic Chattel Paper", "Equipment", "Fixtures", "General Intangibles", "Goods", "Instruments", "Inventory", "Investment Property", "Letter-of-Credit Right", "Proceeds" and **"Tangible Chattel Paper"** shall have the respective meanings assigned to such terms in the Illinois Uniform Commercial Code, as the same may be in effect from time to time.

"Affiliate" shall mean any Person: (i) which, in each case directly or indirectly through one or more intermediaries, controls (including but not limited to all directors and officers of such Person), is controlled by, or is under common control with, either Borrower, (ii) which beneficially owns or holds five percent (*5%*) or more of the voting control or equity interests of either Borrower, or (iii) five percent (*5%*) or more of the voting control or equity interests of which is beneficially owned or held by either Borrower. The term "control" (*including the terms "controlled by" and "under common control with"*) means the possession, directly or indirectly, of the power to cause the direction of the management and policies of the Person in question whether through the ownership of voting securities, by contract or otherwise; provided however that neither Lender nor its Affiliates shall be considered Affiliates of Borrowers or its Affiliates.

"Business Day" shall mean any day other than a Saturday, a Sunday or: (i) with respect to all matters, determinations, fundings and payments in connection with LIBOR Rate Loans, any day on which banks in London, England or Chicago, Illinois are required or permitted to close, and (ii) with respect to all other matters, any day that banks in Chicago, Illinois are required or permitted to close.

"Collateral" shall mean all of the property of Borrowers described in Section 5 hereof, together with all other real or personal property of any Obligor or any other Person now or hereafter pledged to Lender to secure repayment of any of the Liabilities.

"Environmental Law(s)" shall mean all federal, state, district, local and foreign laws, rules, regulations, ordinances, and consent decrees relating to health, safety, hazardous substances, pollution and environmental matters, as now or at any time hereafter in effect, applicable to a Borrower's business or facilities owned or operated by the Borrower, including laws relating to emissions, discharges, releases or threatened releases of pollutants, contamination, chemicals, or hazardous, toxic or dangerous substances, materials or wastes into the environment (*including, without limitation, ambient air, surface water, ground water, land surface or subsurface strata*) or otherwise relating to the generation, manufacture, processing, distribution, use, treatment, storage, disposal, transport or handling of Hazardous Materials.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as amended, modified or restated from time to time.

"Event of Default" shall have the meaning specified in Article 15 hereof.

"Fiscal Quarter" shall mean a period of three consecutive calendar months ending on the last day of March, June, September or December.

"Fiscal Year" shall mean each twelve (*12*) month accounting period of Borrower, which ends on December 31st of each year.

"Hazardous Materials" shall mean any hazardous, toxic or dangerous substance, materials and wastes, including, without limitation, hydrocarbons (*including naturally occurring or man-made petroleum and hydrocarbons*), flammable explosives, asbestos, urea formaldehyde insulation, radioactive materials, biological substances, polychlorinated biphenyls, pesticides, herbicides and any other kind and/or type of pollutants or contaminants (*including, without limitation, materials which include hazardous constituents*), sewage, sludge, industrial slag, solvents and/or any other similar substances, materials, or wastes and including any other substances, materials or wastes that are or become regulated under any Environmental Law (*including, without limitation any that are or become classified as hazardous or toxic under any Environmental Law*).

"Indemnified Party" shall have the meaning specified in Section 18 hereof.

"Intellectual Property" means all of the following owned by, issued to, or licensed to a Borrower or used in connection with or relating to the operation of a Borrower's business: (i) patents, patent applications, patent disclosures and inventions (whether or not patentable and whether or not reduced to practice) and any reissues, continuations, continuations-in-part, divisions, extensions or reexaminations thereof; (ii) trademarks, trade styles, service marks, trade dress, logos, slogans, trade names, corporate names, company names, business names, fictitious business names and other business identifiers and any derivation of any of the foregoing and all registrations and applications for registration thereof, together with all goodwill associated therewith; (iii) copyrights and works of authorship, and all registrations and applications for registration thereof; (iv) computer software (including, without limitation, data, data bases and related documentation); (v) trade secrets, confidential information, and proprietary data and information (including, without limitation, compilations of data (whether or not copyrighted or copyrightable), ideas, formulae, compositions, blends, processes, know-how, manufacturing and production processes and techniques, research and development information, drawings, specifications, designs, plans, improvements, proposals, technical data, financial and accounting data, business and marketing plans, and customer lists, customer information, pricing information, pricing schedules, supplier information and related information); (vi) all other intellectual property rights; and (vii) all copies and tangible embodiments of the foregoing (in whatever form or medium).

"Intercreditor Agreement" shall have the meaning set forth in the recitals hereto.

"Interest Period" shall have the meaning specified in Section 4.1(B) hereof.

"Liabilities" shall mean any and all obligations, liabilities and indebtedness of each Borrower to Lender or to any parent, affiliate or subsidiary of Lender of any and every kind and nature, howsoever created, arising or evidenced and howsoever owned, held or acquired, whether now or hereafter existing, whether now due or to become due, whether primary, secondary, direct, indirect, absolute, contingent or otherwise (*including, without limitation, obligations of performance*), whether several, joint or joint and several, and whether arising or existing under written or oral agreement or by operation of law.

"Loans" shall mean all Term Loans made by Lender to or on behalf of a Borrower hereunder.

"Material Adverse Effect" shall mean a material adverse effect on the business, property, assets, prospects, operations or condition, financial or otherwise, of a Person.

"Net Income" means for any period, the net income, excluding extraordinary times and gains or losses resulting from the sale of assets other than in the ordinary course of business, of Borrowers after all appropriate adjustments in accordance with generally accepted accounting principles.

"Obligor" shall each Borrower and each other Person who is or shall become primarily or secondarily liable for any of the Liabilities or shall pledge collateral for the Liabilities.

"**Original Term**" shall have the meaning specified in Section 10 hereof.

"Other Agreements" shall mean all agreements, instruments and documents, other than this Agreement, including, without limitation, guaranties, mortgages, trust deeds, pledges, powers of attorney, consents, assignments, contracts, notices, security agreements, leases, financing statements and all other writings heretofore, now or from time to time hereafter executed by or on behalf of Borrower or any other Person and delivered to Lender or to any parent, affiliate or subsidiary of Lender in connection with the Liabilities or the transactions contemplated hereby, as each of the same may be amended, modified or supplemented from time to time.

"Parent" shall mean each and any Person now or at any time or times hereafter owning or controlling (*alone or with any other Person*) at least a majority of the issued and outstanding equity of either Borrower.

"**PBGC**" shall have the meaning specified in Section 12.2(e) hereof.

"Permitted Dispositions" shall mean (i) dispositions of inventory, or obsolete, worn-out or surplus equipment, all in the ordinary course of business; (ii) sale of equipment to the extent that such equipment is exchanged for credit against the purchase price of similar replacement equipment, or the proceeds of such sale are applied with reasonable promptness to the purchase of such replacement equipment; (iii) sale or transfer by a Subsidiary of a Borrower to the Borrower or another Subsidiary of the Borrower and (iv) sales or transfers in addition to those described in (i) (iii) which do not exceed $100,000 in the aggregate in any fiscal year.

"Permitted Liens" shall mean (i) statutory liens of landlords, carriers, warehousemen, processors, mechanics, materialmen or suppliers incurred in the ordinary course of business and securing amounts not yet due or declared to be due by the claimant thereunder; (ii) liens or security interests in favor of Lender; (iii) zoning restrictions and easements, licenses, covenants and other restrictions affecting the use of real property that do not individually or in the aggregate have a material adverse effect on an the value of such property or the Borrower's ability to use such real property for its intended purpose in connection with Borrower's business; (iv) liens in connection with purchase money indebtedness and capitalized leases otherwise permitted pursuant to this Agreement, provided, that such liens attach only to the assets the purchase of which was financed by such purchase money indebtedness or which is the subject of such capitalized leases; (v) liens set forth on Schedule 1; and (vi) liens specifically permitted by Lender in writing.

"Person" shall mean any individual, sole proprietorship, partnership, joint venture, trust, unincorporated organization, association, corporation, limited liability company, institution, entity, party or foreign or United States government (*whether federal, state, county, city, municipal or otherwise*), including, without limitation, any instrumentality, division, agency, body or department thereof.

"Plan" shall have the meaning specified in Section 12.2(e) hereof.

"Renewal Term" shall have the meaning specified in Section 10 hereof.

"Subsidiary" of any Person shall mean any corporation of which more than fifty percent (50%) of the outstanding capital stock having ordinary voting power to elect a majority of the board of directors of such corporation (*irrespective of whether at the time stock of any other class of such corporation 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, or any partnership, joint venture or limited liability company of which more than fifty percent (50%) of the outstanding equity interests are at the time, directly or indirectly, owned by such Person or any partnership of which such Person is a general partner.

"Subordinated Debt" means the indebtedness described in Subsections (i) and (ii) of Section 13.2.

"Warrants" shall mean the warrants to ARG and MRR to each purchase 260,185 shares of HCG, issued by HCG to Lender.

ARTICLE 2

LOANS.

Section 2.1 Loans.

Subject to the terms and conditions of this Agreement and the Other Agreements and relying upon the representations and warranties herein set forth:

Lender agrees to make a loan in the principal amount equal to Two Million U.S. dollars ($2,000,000) (*"Term Loan"*). Amounts paid or prepaid by a Borrower in respect of the Term Loans may not be re-borrowed.

Each Borrower hereby irrevocably authorizes Lender to disburse the proceeds of each Term Loan requested by such Borrower, or deemed to be requested by such Borrower, as follows: the proceeds of each Loan shall be disbursed by Lender in lawful money of the United States of America in immediately available funds, in accordance with the terms of the written disbursement letter from the Borrower.

Section 2.2 Repayments. The Borrowers shall be jointly and severally liable, and each Borrower hereby unconditionally promises, to repay the Loans and other Liabilities UPON DEMAND BY LENDER. Prior to such demand, Liabilities shall be repaid as follows:

(a) Repayment of Liabilities. Subject to the terms of the Intercreditor Agreement, the Loans and all other Liabilities shall be repaid in full upon the earlier of: (i) the last day of the Original Term or any Renewal Term if this Agreement is renewed pursuant to Section 10 hereof.

(b) Mandatory Prepayments of Loans and Liabilities. Subject to the terms of the Intercreditor Agreement, except for Permitted Dispositions, upon receipt of the proceeds of the sale or other disposition of any Equipment of a Borrower which is subject to a security interest in favor of Lender, or if any of the Equipment subject to such security interest is damaged, destroyed or taken by condemnation in whole or in part, the proceeds thereof shall be paid by the Borrower to Lender as a mandatory prepayment of the Loans and the other Liabilities.

(c) Application of Borrowers' Payments. Any payments made by Borrowers to the Lender pursuant to this Agreement (other than with respect to interest) shall be applied to the Term Loans.

Section 2.3 Notes. The Term Loan shall be evidenced by one or more promissory notes in form and substance reasonably satisfactory to Lender.

ARTICLE 3

INTENTIONALLY OMITTED

ARTICLE 4

INTEREST, FEES AND CHARGES.

Section 4.1 Interest Rates. Subject to the terms and conditions set forth below:

(A) the Term Loans shall bear interest at the per annum rate of interest of ten percent (10%), payable on the last Business Day of each month in arrears.

(B) Upon the occurrence of an Event of Default, the Loans shall bear interest at the rate of three percent (*3%*) per annum in excess of the interest rate otherwise payable thereon, which interest shall be payable on demand.

(C) All interest shall be calculated on the basis of a 360-day year.

Section 4.2 Fees and Charges.

(a) Costs and Expenses. Borrowers shall be jointly and severally liable to reimburse Lender for all costs and expenses, including, without limitation, legal expenses and reasonable attorneys' fees (*whether for internal or outside counsel*), incurred by Lender in connection with the: (i) documentation and consummation of this transaction and any other transactions between Borrower and Lender, including, without limitation, Uniform Commercial Code and other public record searches and filings, overnight courier or other express or messenger delivery, appraisal costs, surveys, title insurance and environmental audit or review costs; (ii) collection, protection or enforcement of any rights in or to the Collateral; (iii) collection of any Liabilities; and (iv) administration and enforcement of any of Lender's rights under this Agreement or any Other Agreement. Borrowers shall be jointly and severally liable to also pay any additional services requested by a Borrower from Lender. All such costs, expenses and charges shall constitute Liabilities hereunder, shall be payable by Borrowers to Lender on demand and until paid shall bear interest at the highest rate then applicable to Loans hereunder.

(b) Capital Adequacy Charge. If Lender shall have determined that the adoption of any law, rule or regulation regarding capital adequacy, or any change therein or in the interpretation or application thereof, or compliance by Lender with any request or directive regarding capital adequacy (*whether or not having the force of law*) from any central bank or governmental authority enacted after the date hereof, does or shall have the effect of reducing the rate of return on such party's capital as a consequence of its obligations hereunder to a level below that which Lender could have achieved but for such adoption, change or compliance (*taking into consideration Lender's policies with respect to capital adequacy*) by a material amount, then from time to time, after submission by Lender to Borrowers of a written demand therefore (*"Capital Adequacy Demand"*) together with the certificate described below, Borrowers shall be jointly and severally liable to pay to Lender such additional amount or amounts (*"Capital Adequacy Charge"*) as will compensate Lender for such reduction, such Capital Adequacy Demand to be made with reasonable promptness following such determination. A certificate of Lender claiming entitlement to payment as set forth above

shall be conclusive in the absence of manifest error. Such certificate shall set forth the nature of the occurrence giving rise to such reduction, the amount of the Capital Adequacy Charge to be paid to Lender, and the method by which such amount was determined. In determining such amount, Lender may use any reasonable averaging and attribution method, applied on a non-discriminatory basis.

Section 4.3 Maximum Interest. It is the intent of the parties that the rate of interest and other charges to Borrowers under this Agreement and the Other Agreements shall be lawful; therefore, if for any reason the interest or other charges payable under this Agreement are found by a court of competent jurisdiction, in a final determination, to exceed the limit which Lender may lawfully charge Borrowers, then the obligation to pay interest and other charges shall automatically be reduced to such limit and, if any amount in excess of such limit shall have been paid, then such amount shall be refunded to Borrowers.

ARTICLE 5

COLLATERAL.

Section 5.1 Grant of Security Interest to Lender. As security for the payment of all Loans now or in the future made by Lender to Borrowers hereunder and for the payment or other satisfaction of all other Liabilities, each Borrower hereby assigns to Lender and grants to Lender a continuing security interest in the following property of such Borrower, whether now or hereafter owned, existing, acquired or arising and wherever now or hereafter located: (a) all Accounts, and all Goods whose sale, lease or other disposition by the Borrower has given rise to Accounts and have been returned to, or repossessed or stopped in transit by, the Borrower; (b) all Chattel Paper, Instruments, Documents and General Intangibles (*including, without limitation, all Intellectual Property, franchises, tax refund claims, claims against carriers and shippers, guarantee claims, contract rights, payment intangibles, security interests, security deposits and rights to indemnification*); (c) all Inventory (d) all Goods (other than Inventory), including, without limitation, Equipment, vehicles and Fixtures; (e) all Investment Property; (f) all Deposit Accounts, bank accounts, deposits and cash; (g) all Letter-of-Credit Rights; (h) Commercial Tort Claims listed on Exhibit C hereto (i) any other property of the Borrower now or hereafter in the possession, custody or control of Lender or any agent or any parent, affiliate or subsidiary of Lender or any participant with Lender in the Loans, for any purpose (*whether for safekeeping, deposit, collection, custody, pledge, transmission or otherwise*) and (j) all additions and accessions to, substitutions for, and replacements, products and Proceeds of the foregoing property, including, without limitation, proceeds of all insurance policies insuring the foregoing property, and all of the Borrower's books and records relating to any of the foregoing and to the Borrower's business.

Section 5.2 Other Security. Lender, in its sole discretion, without waiving or releasing any obligation, liability or duty of Borrowers under this Agreement or the Other Agreements or any Event of Default, may at any time or times hereafter, but shall not be obligated to, pay, acquire or accept an assignment of any security interest, lien, encumbrance or claim asserted by any Person in, upon or against the Collateral. All sums paid by Lender in respect thereof and all costs, fees and expenses including, without limitation, reasonable attorney

fees, all court costs and all other charges relating thereto incurred by Lender shall constitute Liabilities, payable by Borrowers to Lender on demand and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

Section 5.3 Possessory Collateral. Subject to the terms of the Intercreditor Agreement, immediately upon a Borrower's receipt of any portion of the Collateral evidenced by an agreement, Instrument or Document, including, without limitation, any Tangible Chattel Paper and any Investment Property consisting of certificated securities, the Borrower shall deliver the original thereof to Lender together with an appropriate endorsement or other specific evidence of assignment thereof to Lender (*in form and substance acceptable to Lender*). If an endorsement or assignment of any such items shall not be made for any reason, Lender is hereby irrevocably authorized, as the Borrower's attorney and agent-in-fact, to endorse or assign the same on the Borrower's behalf.

Section 5.4 Electronic Chattel Paper. To the extent that a Borrower obtains or maintains any Electronic Chattel Paper, the Borrower shall create, store and assign the record or records comprising the Electronic Chattel Paper in such a manner that: (i) a single authoritative copy of the record or records exists which is unique, identifiable and except as otherwise provided in clauses (iv), (v) and (vi) below, unalterable, (ii) the authoritative copy identifies Lender as the assignee of the record or records, (iii) the authoritative copy is communicated to and maintained by the Lender or its designated custodian, (iv) copies or revisions that add or change an identified assignee of the authoritative copy can only be made with the participation of Lender, (v) each copy of the authoritative copy and any copy of a copy is readily identifiable as a copy that is not the authoritative copy and (vi) any revision of the authoritative copy is readily identifiable as an authorized or unauthorized revision.

ARTICLE 6

PRESERVATION OF COLLATERAL AND PERFECTION OF SECURITY INTERESTS THEREIN.

Each Borrower shall, at Lender's request, at any time and from time to time, authenticate, execute and deliver to Lender such financing statements, documents and other agreements and instruments (*and pay the cost of filing or recording the same in all public offices deemed necessary or desirable by Lender*) and do such other acts and things or cause third parties to do such other acts and things as Lender may deem necessary or desirable in its sole discretion in order to establish and maintain a valid, attached and perfected security interest in the Collateral in favor of Lender (*free and clear of all other liens, claims, encumbrances and rights of third parties whatsoever, whether voluntarily or involuntarily created, except Permitted Liens*) to secure payment of the Liabilities, and in order to facilitate the collection of the Collateral. Each Borrower irrevocably hereby makes, constitutes and appoints Lender (*and all Persons designated by Lender for that purpose*) as Borrower's true and lawful attorney and agent-in-fact to execute and file such financing statements, documents and other agreements and instruments and do such other acts and things as may be necessary to preserve and perfect Lender's security interest in the Collateral. Such financing statements may describe the Collateral in the same manner as described in this Agreement or may contain an indication or description of collateral that describes such property in any other manner as the Lender may

determine, in its sole discretion, is necessary, advisable or prudent to ensure the perfection of the security interest in the collateral granted to the Lender, including, without limitation, describing such property as "all assets" or "all personal property." Each Borrower further agrees that a carbon, photographic, photostatic or other reproduction of this Agreement or of a financing statement shall be sufficient as a financing statement. Each Borrower further ratifies and confirms the prior filing by Lender of any and all financing statements which identify the Borrower as debtor, Lender as secured party and any or all Collateral as collateral.

ARTICLE 7

POSSESSION OF COLLATERAL AND RELATED MATTERS.

Until an Event of Default has occurred, each Borrower shall have the right, except as otherwise provided in this Agreement, in the ordinary course of the Borrower's business, to (a) sell, lease or furnish under contracts of service any of the Borrower's Inventory normally held by the Borrower for any such purpose; (b) use and consume any raw materials, work in process or other materials normally held by the Borrower for such purpose; and (c) make Permitted Dispositions; provided, however, that a sale in the ordinary course of business shall not include any transfer or sale in satisfaction, partial or complete, of a debt owed by the Borrower.

ARTICLE 8

COLLECTIONS.

(A) Subject to the terms of the Intercreditor Agreement, lender may, at any time and from time to time, whether before or after the occurrence of an Event of Default and whether before or after notification to any Account Debtor and whether before or after the maturity of any of the Liabilities, (i) enforce collection of any of Borrower's Accounts or other amounts owed to a Borrower by suit or otherwise; (ii) exercise all of Borrower's rights and remedies with respect to proceedings brought to collect any Accounts or other amounts owed to a Borrower; (iii) surrender, release or exchange all or any part of any Accounts or other amounts owed to a Borrower, or compromise or extend or renew for any period (*whether or not longer than the original period*) any indebtedness thereunder; (iv) sell or assign any Account of a Borrower or other amount owed to a Borrower upon such terms, for such amount and at such time or times as Lender deems advisable; (v) prepare, file and sign a Borrower's name on any proof of claim in bankruptcy or other similar document against any Account Debtor or other Person obligated to the Borrower; and (vi) do all other acts and things which are necessary, in Lender's sole discretion, to fulfill Borrowers' obligations under this Agreement and the Other Agreements and to allow Lender to collect the Accounts or other amounts owed to Borrowers. In addition to any other provision hereof, Lender may at any time, whether before or after the occurrence of an Event of Default, at Borrowers' expense, notify any parties obligated on any of the Accounts to make payment directly to Lender of any amounts due or to become due thereunder.

ARTICLE 9

COLLATERAL, AVAILABILITY AND FINANCIAL REPORTS AND SCHEDULES.

Section 9.1 Monthly Reports. Each Borrower shall deliver to Lender, in addition to any other reports, as soon as practicable and in any event: (i) within fifteen (*15*) days after the end of each month, (A) a detailed trial balance of the Borrower's Accounts aged per invoice date, in form and substance satisfactory to Lender including, without limitation, the names (*and addresses*) of all Account Debtors of the Borrower, and (B) a summary and detail of accounts payable (*such Accounts and accounts payable divided into such time intervals as Lender may require in its sole discretion*), including a listing of any held checks; and (ii) within fifteen (*15*) days after the end of each month, the general ledger inventory account balance, a perpetual inventory report and Lender's standard form of Inventory report then in effect or the form most recently requested from the Borrower by Lender, for the Borrower by each category of Inventory, together with a description of the monthly change in each category of Inventory.

Section 9.2 Financial Statements. Each Borrower shall deliver to Lender the following financial information, all of which shall be prepared in accordance with generally accepted accounting principles consistently applied, (i) no later than thirty (*30*) days after the end of each calendar month, copies of internally prepared financial statements, including, without limitation, balance sheets and statements of income, retained earnings and cash flow of such Borrower, certified by the Chief Financial Officer of the Borrower; (ii) no later than forty-five (*45*) days after the end of each of the first three Fiscal Quarters of each Fiscal Year, copies of the Borrower's internally prepared financial statements including, without limitation, balance sheets, statements of income, retained earnings, cash flows and reconciliation of surplus, certified by the Chief Financial Officer of the Borrower and accompanied by a compliance certificate in the form of Exhibit B hereto, which compliance certificate shall include a calculation of all financial covenants contained in this Agreement and (iii) no later than ninety (*90*) days after the end of each of the Borrower's Fiscal Years, (A) audited annual financial statements with an unqualified opinion by independent certified public accountants selected by the Borrower and satisfactory to Lender, (B) copies of any management letters sent to the Borrower by such accountants and (C) a compliance certificate in the form of Exhibit B hereto, which compliance certificate shall include a calculation of all financial covenants contained in this Agreement.

Section 9.3 Annual Projections. As soon as practicable and in any event not less than thirty (*30*) days prior to the beginning of each Fiscal Year, each Borrower shall deliver to Lender projected balance sheets, statements of income and cash flow for such Borrower, for each of the twelve (*12*) months during such Fiscal Year, which shall include the assumptions used therein, together with appropriate supporting details as reasonably requested by Lender.

Section 9.4 Explanation of Budgets and Projections. In conjunction with the delivery of the annual presentation of projections or budgets referred to in Section 8.3 above, each Borrower shall deliver a letter signed by the President or a Vice President of such Borrower and by the Treasurer or Chief Financial Officer of such Borrower, describing, comparing and analyzing, in detail, all changes and developments between the anticipated financial results included in such projections or budgets and the historical financial statements of the Borrower.

Section 9.5 Other Information. Promptly following request therefore by Lender, such other business or financial data, reports, appraisals and projections as Lender may request.

ARTICLE 10

TERMINATION; AUTOMATIC RENEWAL; PREPAYMENT FEE.

THIS AGREEMENT SHALL BE IN EFFECT FROM THE DATE HEREOF UNTIL FEBRUARY 2, 2006 (*THE "ORIGINAL TERM"*) AND SHALL AUTOMATICALLY RENEW ITSELF FROM YEAR TO YEAR THEREAFTER (*EACH SUCH ONE-YEAR RENEWAL BEING REFERRED TO HEREIN AS A "RENEWAL TERM"*) UNLESS (A) LENDER ELECTS TO TERMINATE THIS AGREEMENT AT THE END OF THE ORIGINAL TERM OR ANY RENEWAL TERM OR MAKES DEMAND FOR REPAYMENT PRIOR TO THE END OF THE ORIGINAL TERM OR THE THEN CURRENT RENEWAL TERM; (B) THE DUE DATE OF THE LIABILITIES IS ACCELERATED PURSUANT TO SECTION 16 HEREOF; OR (C) BORROWERS ELECT TO TERMINATE THIS AGREEMENT AT THE END OF THE ORIGINAL TERM OR AT THE END OF ANY RENEWAL TERM BY GIVING LENDER WRITTEN NOTICE OF SUCH ELECTION AT LEAST NINETY (90) DAYS PRIOR TO THE END OF THE ORIGINAL TERM OR THE THEN CURRENT RENEWAL TERM AND BY PAYING ALL OF THE LIABILITIES IN FULL ON THE LAST DAY OF SUCH TERM. If one or more of the events specified in clauses (A), (B) and (C) occurs or this Agreement otherwise expires, then (i) Lender shall not make any additional Loans on or after the date identified as the date on which the Liabilities are to be repaid; and (ii) this Agreement shall terminate on the date thereafter that the Liabilities are indefeasibly paid in full. At such time as Borrowers have repaid all of the Liabilities and this Agreement has terminated, Borrowers shall deliver to Lender a release, in form and substance satisfactory to Lender, of all obligations and liabilities of Lender and its officers, directors, employees, agents, parents, subsidiaries and affiliates to Borrowers, and if Borrowers are obtaining new financing from another lender, Borrowers shall deliver such lender's indemnification of Lender, in form and substance reasonably satisfactory to Lender, for checks which Lender has credited to Borrower's account, but which subsequently are dishonored for any reason or for automatic clearinghouse or wire transfers not yet posted to Borrowers' account. If, during the term of this Agreement, Borrowers prepay all of the Liabilities from any source other than income from the ordinary course of operations of Borrowers' business and this Agreement is terminated, each Borrower agrees to pay to Lender as a prepayment fee, in addition to the payment of all other Liabilities, an amount equal to (i) one percent (1%) of the Maximum Revolving Loan Limit if the prepayment occurs one (1) year or more prior to the end of the Original Term or (ii) one half of one percent (.5%) of the Maximum Revolving Loan Limit if such prepayment occurs less than one (1) year prior to the end of the Original Term or during any then current Renewal Term, payable at the time of the payment of all Liabilities.

ARTICLE 11

REPRESENTATIONS AND WARRANTIES.

Each Borrower hereby represents and warrants to Lender, which representations and warranties (*whether appearing in this Section 10 or elsewhere*) shall be true and correct at the time of such Borrower's execution hereof and the closing of the transactions described herein or related hereto, shall remain true until the repayment in full and satisfaction of all the Liabilities and termination of this Agreement, and shall be deemed to have been remade by the Borrower at the time each Loan is made pursuant to this Agreement.

Section 11.1 Financial Statements and Other Information. The financial statements and other information delivered or to be delivered by such Borrower to Lender at or prior to the date of this Agreement accurately reflect the financial condition of such Borrower, and there has been no adverse change in the financial condition, the operations or any other status of such Borrower since the date of the financial statements delivered to Lender most recently prior to the date of this Agreement. All written information now or heretofore furnished by or on behalf of the Borrower to Lender is true and correct as of the date with respect to which such information was furnished.

Section 11.2 Locations. The office where such Borrower keeps its books, records and accounts (*or copies thereof*) concerning the Collateral, the Borrower's principal place of business and all of the Borrower's other places of business, locations of Collateral and post office boxes and locations of bank accounts are as set forth in Exhibit A and at other locations within the continental United States of which Lender has been advised by the Borrower in accordance with Section 12.2(a). The Collateral, including, without limitation, the Equipment (*except any part thereof which the Borrower shall have advised Lender in writing consists of Collateral normally used in more than one state*) is kept, or, in the case of vehicles, based, only at the addresses set forth on Exhibit A and at other locations within the continental United States of which Lender has been advised by the Borrower in accordance with Section 12.2(a). The Borrower does not own any real property.

Section 11.3 Loans by Borrowers. Except as set forth on Schedule 11.9, such Borrower has not made any loans or advances to any Affiliate or other Person except for advances authorized hereunder to employees, officers and directors of such Borrower for travel and other expenses arising in the ordinary course of business.

Section 11.4 Liens. Such Borrower is the lawful owner of all Collateral pledged by it hereunder now purportedly owned or hereafter purportedly acquired by the Borrower, free from all liens, claims, security interests and encumbrances whatsoever, whether voluntarily or involuntarily created and whether or not perfected, other than the Permitted Liens.

Section 11.5 Organization, Authority and No Conflict. HCG is a corporation, duly organized, validly existing and in good standing under the laws of the State of Illinois. HCG's state organizational identification number is 51473825. NSL is a limited liability company, duly formed, validly existing and in good standing under the laws of the State of Florida. NSL's state organizational identification number is L02000028918. Each Borrower is

duly qualified and in good standing in all states where the nature and extent of the business transacted by it or the ownership of its assets makes such qualification necessary. Each Borrower has the right and power and is duly authorized and empowered to enter into, execute and deliver this Agreement and the Other Agreements and perform its obligations hereunder and thereunder. The Borrower's execution, delivery and performance of this Agreement and the Other Agreements does not conflict with, or constitutes a default under, the provisions of its organizational documents or any statute, regulation, ordinance or rule of law, or any agreement, contract or other document which may now or hereafter be binding on such Borrower, and the Borrower's execution, delivery and performance of this Agreement and the Other Agreements do not require any consent or approval of, or registration or filing with, or any other action by any governmental authority and shall not result in the imposition of any lien or other encumbrance upon such Borrower's property under any existing indenture, mortgage, deed of trust, loan, credit agreement, or other agreement or instrument by which the Borrower or any of its property may be bound or affected except liens created by this Agreement and Other Agreements.

Section 11.6 Litigation. Except as set forth on Schedule 11.7, there are no actions or proceedings which are pending or to such Borrower's knowledge, threatened against the Borrower or its Parent, or against any of their Affiliates which might have an adverse effect on the Borrower, and the Borrower shall, promptly upon becoming aware of any such pending or threatened action or proceeding, give written notice thereof to Lender. The Borrower has no Commercial Tort Claims other than those set forth on Exhibit C hereto as Exhibit C may be amended from time to time.

Section 11.7 Compliance with Laws and Maintenance of Permits. Such Borrower has obtained all governmental consents, franchises, certificates, licenses, authorizations, approvals and permits necessary for the conduct of its business. The Borrower is in compliance in all material respects with all applicable federal, state, local and foreign statutes, orders, regulations, rules and ordinances (*including, without limitation, Environmental Laws and statutes, orders, regulations, rules and ordinances relating to taxes, employer and employee contributions and similar items, securities, ERISA or employee health and safety*).

Section 11.8 Affiliate Transactions. Except as set forth on Schedule 11.9 hereto or as permitted pursuant to Section 13.9 hereof, such Borrower is not conducting, permitting or suffering to be conducted, transactions with any officer, director, employee or Affiliate of the Borrower or its Parent or any spouse, parents, children, siblings, mothers-in-law, fathers-in law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law of any such individual. All transactions described on Schedule 11.9, are for the purchase or sale of Inventory or services in the ordinary course of business pursuant to terms that are no less favorable to the Borrower than the terms upon which such transactions would have been made had they been made to or with a Person that has no relationship with the Borrower.

Section 11.9 Names and Trade Names. Such Borrower's name has always been as set forth on the first page of this Agreement and the Borrower uses no trade names, assumed names, fictitious names or division names in the operation of its business, except as set forth on Schedule 11.10 hereto.

Section 11.10 Equipment. Such Borrower has good and indefeasible and merchantable title to and ownership of all of its Equipment. No Equipment is a Fixture to real estate unless such real estate is owned by the Borrower and is subject to a mortgage in favor of Lender, or if such real estate is leased, is subject to a landlord's agreement in favor of Lender on terms acceptable to Lender, or an accession to other personal property unless such personal property is subject to a first priority lien in favor of Lender.

Section 11.11 Enforceability. This Agreement and each Other Agreement to which such Borrower is a party, have been duly executed and delivered by such Borrower and constitute the legal, valid and binding obligations of such Borrower and are enforceable against such Borrower in accordance with their respective terms.

Section 11.12 Solvency. Such Borrower is, after giving effect to the transactions contemplated hereby, solvent, able to pay its debts as they become due, has capital sufficient to carry on its business, now owns property having a value both at fair valuation and at present fair saleable value greater than the amount required to pay its debts, and will not be rendered insolvent by the execution and delivery of this Agreement or any of the Other Agreements or by completion of the transactions contemplated hereunder or thereunder.

Section 11.13 Indebtedness. Except as set forth on Schedule 11.14 hereto, such Borrower is not obligated (*directly or indirectly*) for any loans or other indebtedness for borrowed money other than the Loans.

Section 11.14 Margin Security and Use of Proceeds. Such Borrower does not own any margin securities, and none of the proceeds of the Loans hereunder shall be used for the purpose of purchasing or carrying any margin securities or for the purpose of reducing or retiring any indebtedness which was originally incurred to purchase any margin securities or for any other purpose not permitted by Regulation U of the Board of Governors of the Federal Reserve System as in effect from time to time.

Section 11.15 Parent, Subsidiaries and Affiliates. Except as set forth on Schedule 11.16 hereto, such Borrower has no Parents, Subsidiaries or other Affiliates or divisions, nor is the Borrower engaged in any joint venture or partnership with any other Person.

Section 11.16 No Defaults. Neither the Borrower nor any other Person are in default under any contract, lease or commitment to which the Borrower is a party or by which it is bound, nor is there any dispute regarding any such contract, lease or commitment.

Section 11.17 Employee Matters. There are no controversies pending or threatened between such Borrower and any of its employees, agents or independent contractors other than employee grievances arising in the ordinary course of business which would not, in the aggregate, have a Material Adverse Effect on such Borrower, and such Borrower is in compliance with all federal and state laws respecting employment and employment terms, conditions and practices.

Section 11.18 Intellectual Property. Such Borrower owns or has the right to use all Intellectual Property necessary to conduct its business as now conducted. Schedule 11.19 contains a complete and accurate list and full description of each item of Intellectual Property

together with, in the case of registered Intellectual Property: the (i) applicable registration number; (ii) filing, registration, issue or application date; (iii) record owner; (iv) country; (v) title or description; and (vi) remaining life. In addition, Schedule 11.19 identifies whether each item of Intellectual Property is owned by the Borrower or possessed and used by the Borrower under any license or other agreement. The Intellectual Property constitutes valid and enforceable rights and does not infringe or conflict with the rights of any other Person. There is neither pending, nor to the Borrower's knowledge, threatened, any action or proceedings contesting the validity or right of such Borrower to use any of the Intellectual Property, and neither such Borrower nor any of its Affiliates has received any notice of infringement upon or conflict with any asserted right of others nor, to such Borrower's knowledge, is there a basis for such a notice. To the Borrower's knowledge, no Person is infringing upon its rights to the Intellectual Property. Except as otherwise provided in Schedule 11.19, the Borrower has no obligation to compensate others for the use of any Intellectual Property.

Section 11.19 Environmental Matters. Such Borrower has not generated, used, stored, treated, transported, manufactured, handled, produced or disposed of any Hazardous Materials, on or off its premises (*whether or not owned by it*) in any manner which at any time violates any Environmental Law or any license, permit, certificate, approval or similar authorization thereunder and the operations of such Borrower comply with all Environmental Laws and all licenses, permits, certificates, approvals and similar authorizations thereunder. Except as set forth on Schedule 11.20, there has been no investigation, proceeding, complaint, order, directive, claim, citation or notice by any governmental authority or any other Person, nor is any pending or to the Borrower's knowledge threatened with respect to any non-compliance with or violation of the requirements of any Environmental Law by the Borrower or the release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter, which affects the Borrower or its business, operations or assets or any properties at which Borrowers have transported, stored or disposed of any Hazardous Materials. The Borrower does not have any liability (*contingent or otherwise*) in connection with a release, spill or discharge, threatened or actual, of any Hazardous Materials or the generation, use, storage, treatment, transportation, manufacture, handling, production or disposal of any Hazardous Materials.

Section 11.20 ERISA Matters. All welfare plans and benefit plans provided to the employees of the Borrower have been administered in compliance with and have at all times complied with, all requirements of law including all requirements of ERISA, and each benefit plan intended to qualify under section 401(a) of the Internal Revenue Code has at all times since its adoption been so qualified, and each trust which forms a part of any such plan has at all times since its adoption been tax-exempt under section 501(a) of the code. The Borrower has paid and discharged all obligations and liabilities arising under ERISA of a character which, if unpaid or unperformed, might result in the imposition of a lien against any of its properties or assets, or would have an adverse affect on the Borrower.

Section 11.21 Disclosure. No representation or warranty of such Borrower made hereunder or in the Schedules or in any certificate, statement or other document delivered by or on behalf of the Borrower hereunder contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein or

therein not misleading. The Borrower has disclosed in writing to Lender all information regarding such Borrower, its affiliates and their respective businesses which is known to the Borrower and would be relevant to a reasonable lender's decision whether or not to make the Loans to the Borrowers. Copies of all documents referred to herein or in the Schedules have been delivered or made available to Lender, are true, correct and complete copies thereof, and include all amendments, supplements or modifications thereto or waivers thereunder.

ARTICLE 12

AFFIRMATIVE COVENANTS.

Until payment and satisfaction in full of all Liabilities and termination of this Agreement, unless Borrowers obtain Lender's prior written consent waiving or modifying any of Borrowers' covenants hereunder in any specific instance, Borrowers covenant and agree as follows:

Section 12.1 Maintenance of Records. Each Borrower shall at all times keep accurate and complete books, records and accounts with respect to all of the Borrower's business activities, in accordance with sound accounting practices and generally accepted accounting principles consistently applied, and shall keep such books, records and accounts, and any copies thereof, only at the addresses indicated for such purpose on Exhibit A.

Section 12.2 Notices. Each Borrower shall:

(a) Locations. Promptly (*but in no event less than ten (10) days prior to the occurrence thereof*) notify Lender of the proposed opening of a new place of business or new location of Collateral, the closing of any existing place of business or location of Collateral, any change of the location of the Borrower's books, records and accounts, the opening or closing of any post office box, the opening or closing of any bank account or, if any of the Collateral consists of Goods of a type normally used in more than one state, the use of any such Goods in any state other than a state in which Borrowers have previously advised Lender that such Goods will be used.

(b) Litigation and Proceedings. Promptly upon becoming aware thereof, notify Lender of any actions or proceedings which are pending or threatened against Borrowers, their respective Parents or any Affiliate thereof which might have a adverse effect on either Borrower and of any Commercial Tort Claims of Borrowers which may arise, which notice shall constitute Borrowers' authorization to amend Exhibit C to add such Commercial Tort Claim.

(c) Names and Trade Names. Notify Lender within ten *(10)* days of the change of its name or the use of any trade name, assumed name, fictitious name or division name not previously disclosed to Lender in writing.

(d) ERISA Matters. Immediately notify Lender of (x) the occurrence of any "reportable event" (*as defined in ERISA*) which might result in the

termination by the Pension Benefit Guaranty Corporation (*the "PBGC"*) of any employee benefit plan (*"Plan"*) covering any officers or employees of Borrowers, any benefits of which are, or are required to be, guaranteed by the PBGC, (y) receipt of any notice from the PBGC of its intention to seek termination of any Plan or appointment of a trustee therefore or (z) its intention to terminate or withdraw from any Plan.

(e) Environmental Matters. Promptly notify Lender upon becoming aware of any investigation, proceeding, complaint, order, directive, claim, citation or notice with respect to any non-compliance with or violation of the requirements of any Environmental Law by Borrowers or the generation, use, storage, treatment, transportation, manufacture handling, production or disposal of any Hazardous Materials or any other environmental, health or safety matter which affects either Borrower or its business operations or assets or any properties at which such Borrower has transported, stored or disposed of any Hazardous Materials.

(f) Default; Adverse Change. Promptly advise Lender of any adverse change in the business, property, assets, prospects, operations or condition, financial or otherwise, of Borrowers, the occurrence of any Event of Default hereunder or the occurrence of any event which, if uncured, will become an Event of Default after notice or lapse of time (*or both*).

All of the foregoing notices shall be provided by (a Borrower or both) Borrowers, as applicable, to Lender in writing at Lender's address specified herein.

Section 12.3 Compliance with Laws and Maintenance of Permits. Borrowers shall maintain all governmental consents, franchises, certificates, licenses, authorizations, approvals and permits, the lack of which would have a adverse effect on either Borrower and shall remain in compliance with all applicable federal, state, local and foreign statutes, orders, regulations, rules and ordinances (*including, without limitation, Environmental Laws and statutes, orders, regulations, rules and ordinances relating to taxes, employer and employee contributions and similar items, securities, ERISA or employee health and safety*). Following any determination by Lender that there is non-compliance, or any condition which requires any action by or on behalf of a Borrower in order to avoid non-compliance, with any Environmental Law, at Borrowers' expense cause an independent environmental engineer acceptable to Lender to conduct such tests of the relevant site(s) as are appropriate and prepare and deliver a report setting forth the results of such tests, a proposed plan for remediation and an estimate of the costs thereof.

Section 12.4 Inspection and Audits. Borrowers shall permit Lender, or any Persons designated by it, to call at either Borrower's places of business at any reasonable times, and, without hindrance or delay, to inspect the Collateral and to inspect, audit, check and make extracts from Borrowers' books, records, journals, orders, receipts and any correspondence and other data relating to Borrowers' business, the Collateral or any transactions between the parties hereto, and shall have the right to make such verification concerning Borrowers' business as Lender may consider reasonable under the circumstances. Borrowers shall furnish to Lender

such information relevant to Lender's rights under this Agreement and the Other Agreements as Lender shall at any time and from time to time request. Lender, through its officers, employees or agents shall have the right, at any time and from time to time, in Lender's name, to verify the validity, amount or any other matter relating to any of Borrowers' Accounts, by mail, telephone, telecopy, electronic mail, or otherwise. Each Borrower authorizes Lender to discuss the affairs, finances and business of such Borrower with any officers, employees or directors of such Borrower or with its Parent or any Affiliate or the officers, employees or directors of such Parent or any Affiliate, and to discuss the financial condition of the Borrower with Borrower's independent public accountants. Any such discussions shall be without liability to Lender or to Borrowers' independent public accountants. Borrowers shall pay to Lender all customary fees and all costs and out-of-pocket expenses incurred by Lender in the exercise of its rights hereunder, and all of such fees, costs and expenses shall constitute Liabilities hereunder, shall be payable on demand and until paid shall bear interest at the highest rate then applicable to Loans hereunder.

Section 12.5 Insurance. Each Borrower shall:

(a) Keep the Collateral properly housed and insured for the full insurablevalue thereof against loss or damage by fire, theft, explosion, sprinklers, collision (*in the case of motor vehicles*) and such other risks as are customarily insured against by Persons engaged in businesses similar to that of Borrowers, with such companies, in such amounts, with such deductibles, and under policies in such form, as shall be satisfactory to Lender. Original (*or certified*) copies of such policies of insurance have been or shall be, within ninety (90) days of the date hereof, delivered to Lender, together with evidence of payment of all premiums therefore, and shall contain an endorsement, in form and substance acceptable to Lender, showing loss under such insurance policies payable to Lender. Such endorsement, or an independent instrument furnished to Lender, shall provide that the insurance company shall give Lender at least thirty (*30*) days written notice before any such policy of insurance is altered or canceled and that no act, whether willful or negligent, or default of Borrowers or any other Person shall affect the right of Lender to recover under such policy of insurance in case of loss or damage. In addition, each Borrower shall cause to be executed and delivered to Lender an assignment of proceeds of its business interruption insurance policies. Borrowers hereby direct all insurers under all policies of insurance to pay all proceeds payable thereunder directly to Lender. Each Borrower irrevocably makes, constitutes and appoints Lender (*and all officers, employees or agents designated by Lender*) as such Borrower's true and lawful attorney (*and agent-in-fact*) for the purpose of making, settling and adjusting claims under such policies of insurance, endorsing the name of such Borrower on any check, draft, instrument or other item of payment for the proceeds of such policies of insurance and making all determinations and decisions with respect to such policies of insurance.

(b) Maintain, at its expense, such public liability and third party property damage insurance as is customary for Persons engaged in businesses similar to that of such Borrower with such companies and in such amounts, with such deductibles and under policies in such form as shall be satisfactory to Lender and original (*or certified*) copies of such policies have been or shall be, within ninety (90) days after the date hereof, delivered to Lender, together with evidence of payment of all premiums therefore; each such policy shall contain an endorsement showing Lender as additional insured thereunder and providing that the insurance company shall give Lender at least thirty (*30*) days written notice before any such policy shall be altered or canceled.

If either Borrower at any time or times hereafter shall fail to obtain or maintain any of the policies of insurance required above or to pay any premium relating thereto, then Lender, without waiving or releasing any obligation or default by such Borrower hereunder, may (*but shall be under no obligation to*) obtain and maintain such policies of insurance and pay such premiums and take such other actions with respect thereto as Lender deems advisable. Such insurance, if obtained by Lender, may, but need not, protect such Borrower's interests or pay any claim made by or against such Borrower with respect to the Collateral. Such insurance may be more expensive than the cost of insurance such Borrower may be able to obtain on its own and may be cancelled only upon Borrower's providing evidence that it has obtained the insurance as required above. All sums disbursed by Lender in connection with any such actions, including, without limitation, court costs, expenses, other charges relating thereto and reasonable attorneys' fees, shall constitute the Loans hereunder, shall be payable on demand by Borrowers to Lender and, until paid, shall bear interest at the highest rate then applicable to Loans hereunder.

Section 12.6 Collateral. Borrowers shall keep the Collateral in good condition, repair and order (provided that the Inventory of the Borrowers' "Surplus Village" business shall be maintained in a condition consistent with the prior conduct of that business) and shall make all necessary repairs to the Equipment and replacements thereof so that the operating efficiency and the value thereof shall at all times be preserved and maintained. Each Borrower shall permit Lender to examine any of the Collateral at any time and wherever the Collateral may be located and, Borrowers shall, immediately upon request therefore by Lender, deliver to Lender any and all evidence of ownership of any of the Equipment including, without limitation, certificates of title and applications of title. Borrowers shall, at the request of Lender, indicate on its records concerning the Collateral a notation, in form satisfactory to Lender, of the security interest of Lender hereunder.

Section 12.7 Use of Proceeds. All monies and other property obtained by Borrowers from Lender pursuant to this Agreement shall be used solely for the business purposes of Borrowers.

Section 12.8 Taxes. Borrowers and their respective Parents shall file all required tax returns and pay all of their taxes when due, including, without limitation, taxes imposed by federal, state or municipal agencies, and shall cause any liens for taxes to be promptly released; provided, that Borrowers and their respective Parents shall have the right to contest the payment of such taxes in good faith by appropriate proceedings so long as (i) the

amount so contested is shown on Borrowers' financial statements; (ii) the contesting of any such payment does not give rise to a lien for taxes; (iii) Borrowers keep on deposit with Lender (*such deposit to be held without interest*) an amount of money which, in the judgment of Lender, is sufficient to pay such taxes and any interest or penalties that may accrue thereon; and (iv) if Borrowers fail to prosecute such contest with reasonable diligence, Lender may apply the money so deposited in payment of such taxes. If Borrowers fail to pay any such taxes and in the absence of any such contest by Borrowers, Lender may (*but shall be under no obligation to*) advance and pay any sums required to pay any such taxes and/or to secure the release of any lien therefore, and any sums so advanced by Lender shall constitute Loans hereunder, shall be payable by Borrowers to Lender on demand, and, until paid, shall bear interest at the highest rate then applicable to the Loans.

Section 12.9 Intellectual Property. Each Borrower shall maintain and have the right to use all Intellectual Property used in or necessary for the conduct of its business as heretofore conducted by it.

Section 12.10 Checking Accounts. Each Borrower shall maintain: (i) its general checking/controlled disbursement account with a bank acceptable to Lender in its sole discretion which account shall be subject to an effective control agreement for the benefit of Lender and (ii) its primary banking relationship with such bank.

ARTICLE 13

NEGATIVE COVENANTS.

Until payment and satisfaction in full of all Liabilities and termination of this Agreement, unless Borrowers obtain Lender's prior written consent waiving or modifying any of Borrowers' covenants hereunder in any specific instance, Borrowers agree as follows:

Section 13.1 Guaranties. Neither Borrowers nor their respective Parents shall assume, guarantee or endorse, or otherwise become liable in connection with, the obligations of any Person, except by endorsement of instruments for deposit or collection or similar transactions in the ordinary course of business.

Section 13.2 Indebtedness. Borrowers shall not create, incur, assume or become obligated (*directly or indirectly*), for any loans or other indebtedness for borrowed money other than the Loans, except that Borrowers may: (i) borrow money from a Person other than Lender on an unsecured and subordinated basis if a subordination agreement in favor of Lender and in form and substance satisfactory to Lender is executed and delivered to Lender relative thereto; (ii) maintain its present subordinated indebtedness listed on Schedule 11.14 hereto; (iii) incur unsecured indebtedness to trade creditors in the ordinary course of business; (iv) maintain its indebtedness under the Delaware Amended and Restated Loan and Security Agreement; and (v) incur operating lease obligations requiring payments not to exceed $100,000 in the aggregate during any Fiscal Year of Borrowers.

Section 13.3 Liens. Neither Borrower shall grant or permit to exist (*voluntarily or involuntarily*) any lien, claim, security interest or other encumbrance whatsoever

on any of its assets, other than Permitted Liens. Without limiting the foregoing, neither Borrower shall directly or indirectly create, incur or suffer to exist any mortgage, deed of trust, pledge, lien, security interest or charge or convey any real property owned by it to any Person, or grant any leasehold interests therein.

Section 13.4 Mergers, Sales, Acquisitions, Subsidiaries and Other Transactions Outside the Ordinary Course of Business. Neither Borrower shall: (i) enter into any merger or consolidation; (ii) change the state of such Borrower's organization or enter into any transaction which has the effect of changing such Borrower's state of organization; (iii) except for Permitted Dispositions, sell, lease or otherwise dispose of any assets other than in the ordinary course of business; (iv) purchase the stock, other equity interests or all or a material portion of the assets of any Person or division of such Person; or (v) enter into any other transaction outside the ordinary course of business, including, without limitation, any purchase, redemption or retirement of any shares of any class of its stock or any other equity interest, and any issuance of any shares of, or warrants or other rights to receive or purchase any shares of, any class of its stock or any other equity interest. Neither Borrower shall form any Subsidiaries or enter into any joint ventures or partnerships with any other Person.

Section 13.5 Dividends and Distributions. Neither Borrower shall declare or pay any dividend or make any other distribution (*whether in cash or in kind*) on any class of its equity or in any other manner to Parent.

Section 13.6 Investments; Loans. Borrowers shall not purchase or otherwise acquire, or contract to purchase or otherwise acquire, the obligations or stock of any Person, other than direct obligations of the United States; nor shall Borrowers lend or otherwise advance funds to any Person except for advances made to employees, officers and directors for travel and other expenses arising in the ordinary course of business.

Section 13.7 Fundamental Changes, Line of Business. Borrowers shall not amend its organizational documents or change its Fiscal Year or enter into new lines of business materially different from Borrowers' current business.

Section 13.8 Equipment. Borrowers shall not (i) permit any Equipment to become a Fixture to real property unless such real property is owned by Borrowers and is subject to a mortgage in favor of Lender or (ii) permit any Equipment to become an accession to any other personal property unless such personal property is subject to a first priority lien in favor of Lender.

Section 13.9 Affiliate Transactions. Except as set forth on Schedule 11.9 hereto or as permitted pursuant to Section 11.3 hereof, Borrowers shall not conduct, permit or suffer to be conducted, transactions with any officer, director, employee or Affiliate of Borrowers or any spouse, parents, children, siblings, mothers-in-law, fathers-in law, sons-in-law, daughters-in-law, brothers-in-law, and sisters-in-law of any such individual other than transactions for the purchase or sale of Inventory or services in the ordinary course of business pursuant to terms that are no less favorable to Borrowers than the terms upon which such transactions would have been made had they been made to or with a Person that is not an Affiliate.

Section 13.10 Settling of Accounts. Borrowers shall not settle or adjust any Account.

Section 13.11 Management Fees; Compensation. Borrowers shall not pay any management or consulting fees to any Persons, or pay annual aggregate compensation, whether as salary, bonus or otherwise, to all directors or officers of Borrowers in excess of one hundred ten percent (*110%*) of the aggregate compensation paid to Borrowers' directors and officers during the 2001 Fiscal Year, whether as salary, bonus or otherwise; provided that the Borrowers may continue to pay a management fee to SKM Equity Fund II, L.P. as required by their existing agreement so long as the fee does not exceed $75,000 per year. The aggregate annual compensation amount(s) shall be adjusted each year for the net addition or loss of directors or officers.

ARTICLE 14

FINANCIAL COVENANTS.

Borrowers shall maintain and keep in full force and effect each of the financial covenants set forth below.

Section 14.1 Intentionally Omitted.

Section 14.2 Positive Net Income. As of the last day of each Fiscal Quarter starting the Fiscal Quarter ending March 31, 2004 combined Net Income of the Borrowers shall be positive.

Section 14.3 Intentionally Omitted.

ARTICLE 15

DEFAULT.

The occurrence of any one or more of the following events shall constitute an "Event of Default" by Borrowers hereunder:

Section 15.1 Payment. The failure of any Obligor to pay when due, declared due, or demanded by Lender, any of the Liabilities.

Section 15.2 Breach of this Agreement and the Other Agreements. The failure of any Obligor to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such Obligor under this Agreement or any of the Other Agreements.

Section 15.3 Breaches of Other Obligations. The failure of any Obligor to perform, keep or observe any of the covenants, conditions, promises, agreements or obligations of such Obligor under any other agreement with any Person if such failure might have a Material Adverse Effect on such Obligor.

Section 15.4 Breach of Representations and Warranties. The making or furnishing by any Obligor to Lender of any representation, warranty, certificate, schedule, report or other communication within or in connection with this Agreement or the Other Agreements or in connection with any other agreement between a Borrower and such Obligor, which is untrue or misleading in any respect.

Section 15.5 Loss of Collateral. The loss, theft, damage or destruction of, or (*except as permitted hereby*) sale, lease or furnishing under a contract of service of, any of the Collateral.

Section 15.6 Levy, Seizure or Attachment. The making or any attempt by any Person to make any levy, seizure or attachment upon any of the Collateral.

Section 15.7 Bankruptcy or Similar Proceedings. The commencement of any proceedings in bankruptcy by or against any Obligor or for the liquidation or reorganization of any Obligor, or alleging that such Obligor is insolvent or unable to pay its debts as they mature, or for the readjustment or arrangement of any Obligor's debts, whether under the United States Bankruptcy Code or under any other law, whether state or federal or otherwise, now or hereafter existing, for the relief of debtors, or the commencement of any analogous statutory or non-statutory proceedings involving any Obligor; provided, however, that if such commencement of proceedings against such Obligor is involuntary, such action shall not constitute an Event of Default unless such proceedings are not dismissed within thirty (*30*) days after the commencement of such proceedings, and such Obligor is diligently pursuing the dismissal of such proceedings. Lender shall have no obligation to make Loans to Borrower during such thirty (*30*) days period, or earlier, until such appointment is revoked or such proceedings are dismissed.

Section 15.8 Appointment of Receiver. The appointment of a receiver or trustee for any Obligor, for any of the Collateral or for any substantial part of any Obligor's assets or the institution of any proceedings for the dissolution, or the full or partial liquidation, or the merger or consolidation, of any Obligor which is a corporation, limited liability company or a partnership; provided, however, that if such appointment or commencement of proceedings against such Obligor is involuntary, such action shall not constitute an Event of Default unless such appointment is not revoked or such proceedings are not dismissed within thirty (*30*) days after the commencement of such proceedings, and Borrower is diligently pursuing the revocation of such appointment or the dismissal of such proceedings. Lender shall have no obligation to make Loans to Borrower during such thirty (*30*) days period, or earlier, until such appointment is revoked or such proceedings are dismissed.

Section 15.9 Judgment. The entry of any judgment or order against any Obligor which remains unsatisfied or undischarged and in effect for thirty (*30*) days after such entry without a stay of enforcement or execution.

Section 15.10 Dissolution of Obligor. The death of any Obligor who is a natural Person, or of any general partner who is a natural Person of any Obligor which is a partnership, or any member who is a natural Person of any Obligor which is a limited liability company or the dissolution of any Obligor which is a partnership, limited liability company, corporation or other entity.

Section 15.11 Default or Revocation of Guaranty. The occurrence of an event of default under or the revocation or termination of, any agreement, instrument or document executed and delivered by any Person to Lender pursuant to which such Person has guaranteed to Lender the payment of all or any of the Liabilities or has granted Lender a security interest in or lien upon some or all of such Person's real and/or personal property to secure the payment of all or any of the Liabilities.

Section 15.12 Criminal Proceedings. The institution in any court of a criminal proceeding against any Obligor, or the indictment of any Obligor for any crime.

Section 15.13 Change of Control. The failure of Anthony Graffia, Sr. and his family to, directly or indirectly, own and have voting control of at least forty two and one half percent (*42.5%*) of the issued and outstanding voting equity interests of CHG or its Parent.

Section 15.14 Change of Management. If Anthony Graffia, Sr. shall cease at any time to be the Chief Executive Officer of both Borrowers with active supervision and control over all of the day to day operations of both Borrowers.

Section 15.15 Material Adverse Change. Any material adverse change in the Collateral, business, property, assets, prospects, operations or condition, financial or otherwise, of any Obligor, as determined by Lender in its sole judgment or the occurrence of any event which, in Lender's sole judgment, could have a Material Adverse Effect.

ARTICLE 16

REMEDIES UPON AN EVENT OF DEFAULT.

(A) Subject to the terms of the Intercreditor Agreement, upon the occurrence of an Event of Default described in Section 15.7 hereof, all of the Liabilities shall immediately and automatically become due and payable, without notice of any kind. Upon the occurrence of any other Event of Default, all Liabilities may, at the option of Lender, and without demand, notice or legal process of any kind, be declared, and immediately shall become, due and payable.

(B) Subject to the terms of the Intercreditor Agreement, upon the occurrence of an Event of Default, Lender may exercise from time to time any rights and remedies available to it under the Uniform Commercial Code and any other applicable law in addition to, and not in lieu of, any rights and remedies expressly granted in this Agreement or in any of the Other Agreements and all of Lender's rights and remedies shall be cumulative and non-exclusive to the extent permitted by law. In particular, but not by way of limitation of the foregoing, Lender may, without notice, demand or legal process of any kind, take possession of any or all of the Collateral *(in addition to Collateral of which it already has possession)*, wherever it may be found, and for that purpose may pursue the same wherever it may be found, and may enter onto any of Borrowers' premises where any of the Collateral may be, and search for, take possession of, remove, keep and store any of the Collateral until the same shall be sold or otherwise disposed of, and Lender shall have the right to store the same at any of Borrowers' premises without cost to Lender. At Lender's request, Borrowers shall, at their own expense, assemble the Collateral and make it available to Lender at one or more places to be designated by Lender and

reasonably convenient to Lender and Borrowers. Each Borrower recognizes that if it fails to perform, observe or discharge any of its Liabilities under this Agreement or the Other Agreements, no remedy at law will provide adequate relief to Lender, and agrees that Lender shall be entitled to temporary and permanent injunctive relief in any such case without the necessity of proving actual damages. Any notification of intended disposition of any of the Collateral required by law will be deemed to be a reasonable authenticated notification of disposition if given at least ten (*10*) days prior to such disposition and such notice shall: (i) describe Lender and the applicable Borrower, (ii) describe the Collateral that is the subject of the intended disposition, (iii) state the method of the intended disposition, (iv) state that such Borrower is entitled to an accounting of the Liabilities and state the charge, if any, for an accounting and (v) state the time and place of any public disposition or the time after which any private sale is to be made. Lender may disclaim any warranties that might arise in connection with the sale, lease or other disposition of the Collateral and has no obligation to provide any warranties at such time. Any Proceeds of any disposition by Lender of any of the Collateral may be applied by Lender to the payment of expenses in connection with the Collateral, including, without limitation, legal expenses and reasonable attorneys' fees, and any balance of such Proceeds may be applied by Lender toward the payment of such of the Liabilities, and in such order of application, as Lender may from time to time elect.

ARTICLE 17

CONDITIONS PRECEDENT.

The obligation of Lender to fund the initial Loans is subject to the satisfaction or waiver on or before the date hereof of the following conditions precedent:

(A) Lender shall have received each of the agreements, opinions, reports, approvals, consents, certificates and other documents set forth on the closing document list attached hereto as Schedule 17(A) (*the "Closing Document List"*) in each case in form and substance satisfactory to Lender;

(B) Lender shall have received Borrowers' audited annual financial statements for the Fiscal Year ended December 31, 2003 with an unqualified opinion of KPMG Peat Marwick LLP, all in a form and substance acceptable to Lender in its sole discretion and accompanied by copies of any management letters sent to the Borrowers by such accountants;

(C) Lender shall have received copies of Borrowers' internally prepared financial statements at and for the periods ending September 30, October 31 and November 30, 2004, including, without limitation, balance sheets and statements of income, retained earnings and cash flow of each Borrower, certified by its respective Chief Financial Officer;

(D) Since December 31, 2003, no event shall have occurred which has had or could have a Material Adverse Effect on any Obligor, as determined by Lender in its sole discretion;

(E) Lender shall have received payment in full of all fees and expenses payable to it by Borrowers or any other Person in connection herewith, on or before disbursement of the initial Loans hereunder;

(F) Lender shall have determined that immediately after giving effect to (A) the making of the initial Loans requested to be made on the date hereof, (B) the payment of all fees due upon such date and (C) the payment or reimbursement by Borrowers of Lender for all closing costs and expenses incurred in connection with the transactions contemplated hereby, Borrowers will not exceed the Revolving Loan Limit, assuming for purposes of such calculation that all accounts payable of Lender which remain unpaid more than thirty (30) days after the due dates thereof are additional Revolving Loans outstanding; and

(G) The Obligors shall have executed and delivered to Lender all such other documents, instruments and agreements which Lender determines are reasonably necessary to consummate the transactions contemplated hereby.

ARTICLE 18

INDEMNIFICATION.

Each Borrower agrees to defend (*with counsel satisfactory to Lender*), protect, indemnify and hold harmless Lender, each affiliate or subsidiary of Lender, and each of their respective officers, directors, employees, attorneys and agents (*each an "Indemnified Party"*) from and against any and all liabilities, obligations, losses, damages, penalties, actions, judgments, suits, claims, costs, expenses and disbursements of any kind or nature (*including, without limitation, the disbursements and the reasonable fees of counsel for each Indemnified Party in connection with any investigative, administrative or judicial proceeding, whether or not the Indemnified Party shall be designated a party thereto*), which may be imposed on, incurred by, or asserted against, any Indemnified Party (*whether direct, indirect or consequential and whether based on any federal, state or local laws or regulations, including, without limitation, securities laws and regulations, Environmental Laws and commercial laws and regulations, under common law or in equity, or based on contract or otherwise*) in any manner relating to or arising out of this Agreement or any Other Agreement, or any act, event or transaction related or attendant thereto, the making or issuance and the management of the Loans or the use or intended use of the proceeds of the Loans; provided, however, that Borrowers shall not have any obligation hereunder to any Indemnified Party with respect to matters caused by or resulting from the willful misconduct or gross negligence of such Indemnified Party. To the extent that the undertaking to indemnify set forth in the preceding sentence may be unenforceable because it is violative of any law or public policy, Borrowers shall satisfy such undertaking to the maximum extent permitted by applicable law. Any liability, obligation, loss, damage, penalty, cost or expense covered by this indemnity shall be paid to each Indemnified Party on demand, and, failing prompt payment, shall, together with interest thereon at the highest rate then applicable to Loans hereunder from the date incurred by each Indemnified Party until paid by Borrowers, be added to the Liabilities of Borrowers and be secured by the Collateral. The provisions of this Section 18 shall survive the satisfaction and payment of the other Liabilities and the termination of this Agreement.

ARTICLE 19

NOTICE.

All written notices and other written communications with respect to this Agreement shall be sent by ordinary, certified or overnight mail, by telecopy or delivered in person, and in the case of Lender shall be sent to ARG at 1610 Colonial Parkway, Inverness, IL 60067, attention: Anthony Graffia II and to MRR at 1610 Colonial Parkway, Inverness, IL 60067 attention: Chris Rosman, and in the case of each Borrower shall be sent to it at its respective principal place of business set forth on Exhibit A hereto or as otherwise directed by such Borrower in writing. All notices shall be deemed received upon actual receipt thereof or refusal of delivery.

ARTICLE 20

CHOICE OF GOVERNING LAW; CONSTRUCTION; FORUM SELECTION.

This Agreement and the Other Agreements are submitted by Borrowers to Lender for Lender's acceptance or rejection at Lender's principal place of business as an offer by Borrowers to borrow monies from Lender now and from time to time hereafter, and shall not be binding upon Lender or become effective until accepted by Lender, in writing, at said place of business. If so accepted by Lender, this Agreement and the Other Agreements shall be deemed to have been made at said place of business. THIS AGREEMENT AND THE OTHER AGREEMENTS SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS AS TO INTERPRETATION, ENFORCEMENT, VALIDITY, CONSTRUCTION, EFFECT, AND IN ALL OTHER RESPECTS, INCLUDING, WITHOUT LIMITATION, THE LEGALITY OF THE INTEREST RATE AND OTHER CHARGES, BUT EXCLUDING PERFECTION OF THE SECURITY INTERESTS IN COLLATERAL LOCATED OUTSIDE OF THE STATE OF ILLINOIS, WHICH SHALL BE GOVERNED BY THE LAWS OF THE RELEVANT JURISDICTION IN WHICH SUCH COLLATERAL IS LOCATED. If any provision of this Agreement shall be held to be prohibited by or invalid under applicable law, such provision shall be ineffective only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or remaining provisions of this Agreement.

To induce Lender to accept this Agreement, Borrowers irrevocably agree that, subject to Lender's sole and absolute election, ALL ACTIONS OR PROCEEDINGS IN ANY WAY, MANNER OR RESPECT, ARISING OUT OF OR FROM OR RELATED TO THIS AGREEMENT, THE OTHER AGREEMENTS OR THE COLLATERAL SHALL BE LITIGATED, AT LENDER'S SOLE ELECTION, IN COURTS HAVING SITUS WITHIN THE CITY OF CHICAGO, STATE OF ILLINOIS. BORROWERS HEREBY CONSENT AND SUBMIT TO THE NON-EXCLUSIVE JURISDICTION OF ANY LOCAL, STATE OR FEDERAL COURTS LOCATED WITHIN SAID CITY AND STATE. BORROWERS HEREBY WAIVE PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON BORROWERS BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO BORROWERS, AT THE ADDRESS SET FORTH FOR NOTICE IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE TEN (10) DAYS AFTER THE SAME

HAS BEEN POSTED. BORROWERS HEREBY WAIVE ANY RIGHT IT MAY HAVE TO TRANSFER OR CHANGE THE VENUE OF ANY LITIGATION BROUGHT AGAINST BORROWERS BY LENDER IN ACCORDANCE WITH THIS SECTION.

ARTICLE 21

MODIFICATION AND BENEFIT OF AGREEMENT.

This Agreement and the Other Agreements may not be modified, altered or amended except by an agreement in writing signed by Borrowers or such other Person who is a party to such Other Agreement and Lender. Borrowers may not sell, assign or transfer this Agreement, or the Other Agreements or any portion thereof, including, without limitation, Borrowers' rights, titles, interest, remedies, powers or duties hereunder and thereunder. Borrowers hereby consent to Lender's sale, assignment, transfer or other disposition, at any time and from time to time hereafter, of this Agreement, or the Other Agreements, or of any portion thereof, or participations therein, including, without limitation, Lender's rights, titles, interest, remedies, powers and/or duties and agrees that it shall execute and deliver such documents as Lender may request in connection with any such sale, assignment, transfer or other disposition.

ARTICLE 22

HEADINGS OF SUBDIVISIONS.

The headings of subdivisions in this Agreement are for convenience of reference only, and shall not govern the interpretation of any of the provisions of this Agreement.

ARTICLE 23

POWER OF ATTORNEY.

Each Borrower acknowledges and agrees that its appointment of Lender as its attorney and agent-in-fact for the purposes specified in this Agreement is an appointment coupled with an interest and shall be irrevocable until all of the Liabilities are satisfied and paid in full and this Agreement is terminated.

ARTICLE 24

CONFIDENTIALITY.

Lender hereby agrees to use commercially reasonable efforts to assure that any and all information relating to Borrowers which is (i) furnished by Borrowers to Lender (*or to any affiliate of Lender*); and (ii) non-public, confidential or proprietary in nature, shall be kept confidential by Lender or such affiliate as required by applicable law; provided, however, that such information and other credit information relating to Borrowers may in connection with Lender's customary internal marketing practices be distributed by Lender or such affiliate to Lender's or such affiliate's directors, officers, employees, attorneys, affiliates, assignees, participants, auditors, agents and regulators, and upon the order of a court or other governmental

agency having jurisdiction over Lender or such affiliate, to any other Person. Borrowers and Lender further agree that this provision shall survive the termination of this Agreement.

ARTICLE 25

COUNTERPARTS.

This Agreement, any of the Other Agreements, and any amendments, waivers, consents or supplements may be executed in any number of counterparts and by different parties hereto in separate counterparts, each of which, when so executed and delivered, shall be deemed an original, but all of which counterparts together shall constitute but one agreement.

ARTICLE 26

ELECTRONIC SUBMISSIONS.

Upon not less than thirty (*30*) days' prior written notice (*the "Approved Electronic Form Notice"*), Lender may permit or require that any of the documents, certificates, forms, deliveries or other communications, authorized, required or contemplated by this Agreement or the Other Agreements, be submitted to Lender in "Approved Electronic Form" (*as hereafter defined*), subject to any reasonable terms, conditions and requirements in the applicable Approved Electronic Forms Notice. For purposes hereof "Electronic Form" means e-mail, e-mail attachments, data submitted on web-based forms or any other communication method that delivers machine readable data or information to Lender, and "Approved Electronic Form" means an Electronic Form that has been approved in writing by Lender (*which approval has not been revoked or modified by Lender*) and sent to Borrowers in an Approved Electronic Form Notice. Except as otherwise specifically provided in the applicable Approved Electronic Form Notice, any submissions made in an applicable Approved Electronic Form shall have the same force and effect that the same submissions would have had if they had been submitted in any other applicable form authorized, required or contemplated by this Agreement or the Other Agreements.

ARTICLE 27

WAIVER OF JURY TRIAL; OTHER WAIVERS.

(A) BORROWERS AND LENDER EACH HEREBY WAIVES ALL RIGHTS TO TRIAL BY JURY IN ANY ACTION OR PROCEEDING WHICH PERTAINS DIRECTLY OR INDIRECTLY TO THIS AGREEMENT, ANY OF THE OTHER AGREEMENTS, THE LIABILITIES, THE COLLATERAL, ANY ALLEGED TORTIOUS CONDUCT BY BORROWERS OR LENDER OR WHICH, IN ANY WAY, DIRECTLY OR INDIRECTLY, ARISES OUT OF OR RELATES TO THE RELATIONSHIP BETWEEN BORROWERS AND LENDER. IN NO EVENT SHALL LENDER BE LIABLE FOR LOST PROFITS OR OTHER SPECIAL, EXEMPLARY, PUNITIVE OR CONSEQUENTIAL DAMAGES.

(B) Each Borrower hereby waives demand, presentment, protest and notice of nonpayment, and further waives the benefit of all valuation, appraisal and exemption laws.

(C) Each Borrower hereby waives the benefit of any law that would otherwise restrict or limit Lender or any affiliate of Lender in the exercise of its right, which is hereby acknowledged and agreed to, to set-off against the Liabilities, without notice at any time hereafter, any indebtedness, matured or unmatured, owing by Lender or such affiliate of Lender to such Borrower, including, without limitation any deposit account at Lender or such affiliate.

(D) EACH BORROWER HEREBY WAIVES ALL RIGHTS TO NOTICE AND HEARING OF ANY KIND PRIOR TO THE EXERCISE BY LENDER OF ITS RIGHTS TO REPOSSESS THE COLLATERAL OF SUCH BORROWER WITHOUT JUDICIAL PROCESS OR TO REPLEVY, ATTACH OR LEVY UPON SUCH COLLATERAL.

Lender's failure, at any time or times hereafter, to require strict performance by Borrowers of any provision of this Agreement or any of the Other Agreements shall not waive, affect or diminish any right of Lender thereafter to demand strict compliance and performance therewith. Any suspension or waiver by Lender of an Event of Default under this Agreement or any default under any of the Other Agreements shall not suspend, waive or affect any other Event of Default under this Agreement or any other default under any of the Other Agreements, whether the same is prior or subsequent thereto and whether of the same or of a different kind or character. No delay on the part of Lender in the exercise of any right or remedy under this Agreement or any Other Agreement shall preclude other or further exercise thereof or the exercise of any right or remedy. None of the undertakings, agreements, warranties, covenants and representations of Borrowers contained in this Agreement or any of the Other Agreements and no Event of Default under this Agreement or default under any of the Other Agreements shall be deemed to have been suspended or waived by Lender unless such suspension or waiver is in writing, signed by a duly authorized officer of Lender and directed to Borrowers specifying such suspension or waiver.

ARTICLE 28

SUBORDINATION

The obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Intercreditor Agreement (the "Intercreditor Agreement") dated as of December 16, 2004, among Delaware Street Capital Master Fund, L. P., a Cayman Islands exempt limited partnership ("DSC"), Hartford Computer Group, Inc., an Illinois corporation ("Hartford"), Nexicore Services, LLC, a Florida limited liability company (together with Hartford, the "Borrowers"), MRR Venture LLC, an Illinois limited liability company, and ARG Investments, an Illinois partnership, to the obligations (including interest)) owed by Borrowers to the holders of all the notes (except the **Term B Notes)** issued pursuant to that certain Amended and Restated Loan and Security Agreement dated as of December 16, 2004, between Borrowers and DSC, as such Agreement has been and hereafter may be supplemented, modified, restated or amended from time to time; and each holder hereof, by its acceptance hereof, shall be bound by the provisions of the Intercreditor Agreement.

[SIGNATURE PAGES TO FOLLOW]

IN WITNESS WHEREOF, the parties hereto have duly executed this Agreement as of the date first written above.

BORROWERS:

HARTFORD COMPUTER GROUP, INC.
an Illinois corporation

By: _____
Name:
Title:

NEXICORE SERVICES, LLC
a Florida limited liability company

By: _____
Name:
Title:

LENDER:

MMR VENTURE, LLC
an Illinois limited liability company

By: _____
Name:
Title:

ARG INVESTMENTS
an Illinois general partnership

By: _____
Name:
Title:

REAFFIRMATION OF SUBORDINATION AGREEMENT

THIS REAFFIRMATION OF SUBORDINATION AGREEMENT (this "Reaffirmation") is made as of May 9, 2005, by and among **MRR VENTURE LLC,** an Illinois limited liability company ("Subordinated Lender"), **DELAWARE STREET CAPITAL MASTER FUND L.P.** ("Senior Lender"), **HARTFORD COMPUTER GROUP, INC.,** a Delaware corporation and successor by merger with Hartford Computer Group, Inc., an Illinois corporation ("HCG"), **NEXICORE SERVICES, LLC,** a Florida limited liability company ("NSL"), **HARTFORD COMPUTER HARDWARE, INC.,** an Illinois corporation ("Hardware"), and **HARTFORD COMPUTER GOVERNMENT, INC.,** an Illinois corporation ("Government," and together with HCG, NSL and Hardware, collectively, the "Borrowers" and individually, the "Borrower"), has reference to the following facts and circumstances:

WHEREAS, Hartford Computer Group, Inc., an Illinois corporation ("Prior Hartford"), and LaSalle Bank National Association ("Original Senior Lender") entered into a Loan and Security Agreement dated as of February 3, 2004 (as amended, restated, supplemented or otherwise modified, the "Original Loan Agreement") and certain related documents (together with the Original Loan Agreement, as amended, supplemented or otherwise modified, the "Original Loan Documents"), pursuant to which, among other things, Original Senior Lender (i) agreed to make loans to Prior Hartford in an amount up to $18,000,000 and (ii) was granted a lien in substantially all assets of Prior Hartford;

WHEREAS, Original Senior Lender and Prior Hartford entered into an Assignment and Assumption Agreement dated as of December 17, 2004 (the "Assignment Agreement") pursuant to which the Original Senior Lender assigned all of its rights and interests under the Original Loan Documents to Senior Lender;

WHEREAS, concurrently with the execution and delivery of the Assignment Agreement, Senior Lender, Prior Hartford and NSL (Prior Hartford and NSL, the "Original Borrowers") amended and restated the Original Loan Agreement by entering into that certain Amended and Restated Loan and Security Agreement, dated as of December 17, 2004 (the "Existing Loan Agreement"), and also amended and restated each of the other Original Loan Documents (together with the Existing Loan Agreement, as further amended, supplemented or otherwise modified from time to time, collectively, the "Amended Loan Documents"), in order to, among other things (i) substitute Original Senior Lender for Senior Lender as the lender thereunder (as provided in the Assignment Agreement) and (ii) increase the total amount of the lender commitment to Original Borrowers to $21,000,000;

WHEREAS, Original Borrowers and Senior Lender entered into that certain First Amendment to Amended and Restated Loan and Security Agreement dated as of December 28, 2004 (the "First Amendment"), in order to, among other things, lend an additional $3,000,000 to Original Borrowers;

WHEREAS, Original Borrowers, Hardware and Government (collectively, the "Current Borrowers"), and Senior Lender entered into that certain Second Amendment to

Amended and Restated Loan and Security Agreement dated as of May 6, 2005 (the "Second Amendment"), in order to, among other things, (i) add Hardware and Government as borrowers under the Existing Loan Agreement and (ii) permit the incurrence of certain additional indebtedness by certain of the Current Borrowers;

WHEREAS, Prior Hartford is indebted to Subordinated Lender pursuant to (i) a Subordinated Promissory Note dated as of September 8, 2003 in the original principal amount of $2,965,000 (the "Initial MRR Subordinated Note"), and (ii) a Subordinated Promissory Note dated as of May 6, 2004 in the original principal amount of $558,552 (the "Second MRR Subordinated Note," and together with the Initial MRR Subordinated Note, the "Subordinated Notes") and the obligations under the Subordinated Notes are secured pursuant to that certain Security Agreement dated September 8, 2003 (the "MRR Security Agreement," together with the Subordinated Notes, collectively, as amended, supplemented, refinanced or otherwise modified from time to time, the "Junior Debt Instruments");

WHEREAS, Subordinated Lender entered into a Subordination Agreement (as amended, supplemented or otherwise modified from time to time, including but not limited to, by (i) the Reaffirmation of Subordination Agreement dated as of May 5, 2004 by and among Subordinated Lender, Original Senior Lender and Prior Hartford, (ii) the Reaffirmation of Subordination Agreement dated as of December 17, 2004 by and among Subordinated Lender, Original Senior Lender and Original Borrowers and (iii) this Reaffirmation, the "Subordination Agreement") dated as of February 3, 2004 among Subordinated Lender, Prior Hartford and Original Senior Lender pursuant to which, among other things, "Junior Debt" (as defined therein) is subordinated to "Senior Debt" (as defined therein).

WHEREAS, Current Borrowers are currently in financial distress and would like to restructure their existing Liabilities and recapitalize Prior Hartford;

WHEREAS, concurrently with the execution and delivery of this Reaffirmation, the Current Borrowers are entering into that certain Master Restructuring Agreement of even date herewith among the Current Borrowers, Hartford, Senior Lender, the equityholders of Prior Hartford, Subordinated Lender and certain other creditors of the Current Borrowers (the "Restructuring Agreement") pursuant to which, among other things, (a) Prior Hartford will form HCG as its wholly-owned subsidiary, (b) Prior Hartford will merge with and into HCG with HCG as the surviving entity (the "Merger"), (c) Prior Hartford and HCG will enter into an Assumption and Reaffirmation Agreement pursuant to which HCG will agree and confirm that by virtue of the Merger, HCG assumes all rights, obligations and duties of Prior Hartford under the Existing Loan Agreement, (d) HCG will be recapitalized, (e) a majority of the subordinated debt of Borrowers will be converted to equity interests in HCG, (g) the Junior Debt evidenced by the Second MRR Subordinated Note and $406,611.11 of the outstanding principal balance of the Initial MRR Subordinated Note will be converted to equity interests in HCG, (h) the remaining outstanding principal balance of the Initial MRR Subordinated Note will be evidenced by that certain Substituted and Amended Promissory Note in the initial principal balance of $1,166,388.89 by HCG in favor of Subordinated Lender (the "Substituted and Amended Initial MRR Subordinated Note")and shall constitute

Junior Debt and such note shall be deemed a Junior Debt Instrument, (i) purchase order financing will be restructured and (j) the loans under the Existing Loan Agreement will be restructured;

WHEREAS, concurrently with the execution and delivery of this Reaffirmation, Borrowers and Senior Lender are entering into that certain Waiver and Third Amendment to Amended and Restated Loan and Security Agreement (the "Third Amendment," and together with the Existing Loan Agreement, the First Amendment, the Second Amendment and as may be further amended, restated, supplemented or otherwise modified from time to time, the "Loan Agreement"; except as otherwise defined herein, all of the defined terms used herein shall have the meaning ascribed to such terms in the Loan Agreement), in order to, among other things, (a) waive the existing defaults under the Existing Loan Agreement and any event of default created by Borrowers' execution, delivery or performance of the Restructuring Agreement and (b) amend the Existing Loan Agreement to restructure the loans thereunder and provide an additional $5,000,000 in Loans.

WHEREAS, the Subordinated Lender is desirous of having Senior Lender extend and/or continue the extension of credit to Borrowers from time to time as Senior Lender in its sole discretion may determine, and Senior Lender has refused to consider the extension and/or continued extension of such credit until the Subordinated Lender reaffirms its obligations under the Subordination Agreement in the manner hereinafter set forth; and

WHEREAS, the extension and/or continued extension of credit, as aforesaid, by Senior Lender is necessary or desirable to the conduct and operation of the business of Borrowers, and will inure to the personal and financial benefit of the Subordinated Lender.

NOW, THEREFORE, in consideration of the above and the promises set forth herein, and for other good and valuable consideration the receipt and adequacy of which is hereby acknowledged, Subordinated Lender hereby represents, warrants and agrees as follows:

1. Attached hereto as Exhibit A are true and correct copies of all documents evidencing or otherwise entered into in connection with the Junior Debt.

2. The Subordinated Lender specifically (a) reaffirms all of its obligations and agreements contained in the Subordination Agreement and (b) agrees and acknowledges that (i) the Senior Lender is "Senior Lender" under the Subordination Agreement, (ii) Junior Debt shall include indebtedness evidenced by the Substituted and Amended Initial MRR Note, (iii) the Substituted and Amended Initial MRR Note is a Junior Debt Instrument, (iv) Junior Debt remains subordinate to the Senior Debt as provided in the Subordination Agreement and (v) any and all obligations of Borrowers under the Junior Debt Instruments are subordinate to Borrowers' obligations under the Amended Loan Documents, including, without limitation, the Loan Agreement.

THIS AGREEMENT SHALL BE GOVERNED AND CONTROLLED BY THE INTERNAL LAWS OF THE STATE OF ILLINOIS.

[Remainder of Page Intentionally Left Blank; Signature Pages to Follow]

IN WITNESS WHEREOF, the undersigned executes this Reaffirmation as of the date first written above.

SUBORDINATED LENDER:

MRR VENTURE LLC
an Illinois limited liability company

By: _____
Name: Robert C Marcus
Title: Manager

SENIOR LENDER:

DELAWARE STREET CAPITAL MASTER FUND, L.P.
a Cayman Islands exempt limited partnership

By: _____
Name: _____
Title: _____

BORROWERS:

HARTFORD COMPUTER GROUP, INC.
a Delaware corporation

By: _____
Name: _____
Title: _____

NEXICORE SERVICES, LLC
a Florida limited liability company

By: _____
Name: _____
Title: _____

IN WITNESS WHEREOF, the undersigned executes this Reaffirmation as of the date first written above.

SUBORDINATED LENDER:

MRR VENTURE LLC
an Illinois limited liability company

By:_____
Name:_____
Title:_____

SENIOR LENDER:

DELAWARE STREET CAPITAL MASTER FUND, L.P.
a Cayman Islands exempt limited partnership

By:_____
Name: Gary Katz
Title: Director

BORROWERS:

HARTFORD COMPUTER GROUP, INC.
a Delaware corporation

By:_____
Name:_____
Title:_____

NEXICORE SERVICES, LLC
a Florida limited liability company

By:_____
Name:_____
Title:_____

IN WITNESS WHEREOF, the undersigned executes this Reaffirmation as of the date first written above.

SUBORDINATED LENDER:

MRR VENTURE LLC
an Illinois limited liability company

By:_____
Name:_____
Title:_____

SENIOR LENDER:

DELAWARE STREET CAPITAL MASTER FUND, L.P.
a Cayman Islands exempt limited partnership

By:_____
Name:_____
Title:_____

BORROWERS:

HARTFORD COMPUTER GROUP, INC.
a Delaware corporation

By: [signature]
Name: Anthony R. Graffeo II
Title: President / CEO

NEXICORE SERVICES, LLC
a Florida limited liability company

By: [signature]
Name: Anthony R. Graffeo II
Title: Manager

HARTFORD COMPUTER HARDWARE, INC.
an Illinois corporation

By: _____
Name: Anthony R. Grafton II
Title: President

HARTFORD COMPUTER GOVERMENT, INC.
an Illinois corporation

By: _____
Name: Anthony R. Grafton II
Title: President