UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MISSOURI
SOUTHEASTERN DIVISION

	§	**Chapter 11**
In re:	§	
	§	**Case No. 20-43597-399**
BRIGGS & STRATTON CORPORATION, *et al.*,	§	
	§	**(Joint Administration Requested)**
	§	
Debtors.[1]	§	Hearing Date: July 21, 2020
	§	Hearing Time: 10:00 a.m. (Central Time)
	§	Hearing Location: Courtroom 5 North,
	§	111 S. 10th St., St. Louis, MO 63102

MOTION OF DEBTORS FOR INTERIM AND FINAL ORDERS (I) AUTHORIZING DEBTORS TO OBTAIN POSTPETITION FINANCING, (II) AUTHORIZING DEBTORS TO USE CASH COLLATERAL, (III) GRANTING LIENS AND SUPERPRIORITY CLAIMS, (IV) GRANTING ADEQUATE PROTECTION TO PREPETITION SECURED PARTIES, (V) MODIFYING AUTOMATIC STAY, (VI) SCHEDULING FINAL HEARING AND (VII) GRANTING RELATED RELIEF

Briggs & Stratton Corporation and its debtor affiliates in the above-captioned chapter 11 cases, as debtors and debtors in possession (collectively, the "**Debtors**"), respectfully represent as follows in support of this motion (the "**Motion**"):

Background

1. On the date hereof (the "**Petition Date**"), the Debtors each commenced with this Court a voluntary case under title 11 of the United States Code (the "**Bankruptcy Code**"). The Debtors are authorized to continue to operate their business and manage their properties as debtors in possession pursuant to sections 1107(a) and 1108 of the Bankruptcy Code. No trustee, examiner, or statutory committee of creditors has been appointed in these chapter 11 cases. The Debtors have also filed a motion requesting joint administration

[1] The Debtors in these chapter 11 cases, along with the last four digits of each Debtor's federal tax identification number are: Briggs & Stratton Corporation (2330), Billy Goat Industries, Inc. (4442), Allmand Bros., Inc. (4710), Briggs & Stratton International, Inc. (9957), and Briggs & Stratton Tech, LLC (2102). The address of the Debtors' corporate headquarters is 12301 West Wirth Street, Wauwatosa, Wisconsin 53222.

of their chapter 11 cases pursuant to Rule 1015(b) of the Federal Rules of Bankruptcy Procedure (the "**Bankruptcy Rules**") and Rule 1015(b) of the Local Rules of Bankruptcy Procedure for the Eastern District of Missouri (the "**Local Rules**").

2. The Debtors, combined with their non-Debtor affiliates (collectively, the "**Company**"), are the world's largest producer of gasoline engines for outdoor power equipment and a leading designer, manufacturer and marketer of power generation, pressure washer, lawn and garden, turf care and job site products. The Company's products are marketed and serviced in more than 100 countries on six continents through 40,000 authorized dealers and service organizations. Additional information regarding the Debtors' business and capital structure and the circumstances leading to the commencement of these chapter 11 cases is set forth in the *Declaration of Jeffrey Ficks, Financial Advisor of Briggs & Stratton Corporation, in Support of the Debtors' Chapter 11 Petitions and First Day Relief*, sworn to on the date hereof (the "**Ficks Declaration**"),[2] which has been filed with the Court contemporaneously herewith and is incorporated by reference herein.

Jurisdiction

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

Preliminary Statement

4. The Debtors commenced these Chapter 11 Cases after a volatile period marked by business challenges, distressed market conditions (exacerbated by the COVID-19 pandemic) and a looming liquidity crisis in light of the upcoming maturity of their funded debt—

[2] Capitalized terms used but not otherwise defined herein shall have the meanings ascribed to such terms in the Ficks Declaration, the Lewis Declaration or the Proposed DIP Orders, as applicable. All dollar ($) references in this Motion are to the U.S. dollar, unless stated otherwise.

specifically, the Debtors' Unsecured Notes mature in December 2020, and the Prepetition ABL Credit Agreement (as defined below) provides for a springing maturity if the Unsecured Notes are still outstanding as of September 15, 2020 and unreserved under the Prepetition ABL Credit Agreement.

5. In the face of these pressures and challenges, the Debtors have worked with their advisors to explore various strategic restructuring alternatives and devise a liquidity solution for their business. Ultimately, the Debtors determined that commencing these chapter 11 cases to implement a comprehensive restructuring swiftly through a going concern sale of substantially all of their assets through an in-court sale process pursuant to section 363 of the Bankruptcy Code is in their best interests and will maximize their value for the benefit of their stakeholders.

6. The Debtors' ability to continue their operations as a going concern without interruption while consummating an expeditious going concern sale of substantially all of their assets in chapter 11 is essential for the Debtors to achieve their goal of maximizing the value of their estates for the benefit of all of their stakeholders. To accomplish this, the Debtors desperately need additional liquidity in the form of postpetition financing. The Debtors are entering chapter 11 with limited cash on hand—as of the Petition Date, the Debtors will only have approximately $16.5 million in cash on hand—all of which constitutes Cash Collateral (as defined below). Therefore, immediate access to postpetition debtor-in-possession financing and continued use of Cash Collateral are critical to ensure the Debtors' smooth entry into chapter 11 and their ability to operate their business prudently during the pendency of these chapter 11 cases.

7. By this Motion, the Debtors seek approval of the DIP Facilities (as defined below) in an aggregate principal amount not to exceed $677.5 million consisting of (a) the DIP ABL Facility (as defined below) in an aggregate principal amount not to exceed $412.5 million, provided by the DIP ABL Lenders (as defined below) and (b) the DIP Term Loan Facility (as defined below) in an aggregate principal amount not to exceed $265 million, provided by the DIP Term Loan Lender, with an interim draw of $20 million upon entry of the Proposed Interim DIP Order. The Debtors also seek approval of the consensual use of the Prepetition ABL Lenders' (as defined below) Cash Collateral to pay Prepetition ABL Obligations (as defined below).

8. The DIP Facilities and terms for use of Cash Collateral to pay Prepetition ABL Obligations were negotiated in good faith and at arms' length and provide the Debtors with immediate access to critical capital, with the least amount of execution risk. Further, in the months leading up to these Chapter 11 Cases, the Debtors and their advisors conducted extensive marketing efforts, and the Debtors believe that they have obtained the best and only postpetition financing available under the circumstances. The DIP Facilities will provide the Debtors with the necessary liquidity for the administration of these Chapter 11 Cases through an expeditious in-court sale process, in which the Debtors will sell substantially all of their assets, followed by an orderly wind down of the Debtors' estates. Without access to the DIP Facilities and use of Cash Collateral to pay Prepetition ABL Obligations, the Debtors would lack adequate liquidity to continue operations or consummate a sale in chapter 11, resulting in a value-destructive, piecemeal liquidation and the loss of thousands of jobs that are desperately needed during these unprecedented times.

9. Accordingly, the Debtors submit that entry into the DIP Facilities, including the agreement to use Cash Collateral to pay Prepetition ABL Obligations—which provide the Debtors with immediate access to critical liquidity needed to consummate a going concern sale of their business— is a sound exercise of the Debtors' business judgment, will avoid irreparable harm to operations (through immediate access to funding under the proposed Interim DIP Order), will maximize the value of the Debtors' estates for the benefit of their stakeholders, and should be approved by the Court.

Relief Requested

10. By this Motion, pursuant to sections 105, 361, 362, 363(b), 363(c)(2), 364(c)(1), 364(c)(2), 364(c)(3), 364(d)(1), 364(e) and 507(b) of the Bankruptcy Code, Bankruptcy Rules 2002, 4001, 6004 and 9014, and the Local Rules, the Debtors seek entry of an interim order (the "**Proposed Interim DIP Order**") and, pending a final hearing on the relief requested herein, a final order (the "**Proposed Final DIP Order**" and, together with the Proposed Interim Order, the "**Proposed DIP Orders**"),[3] granting the following relief:

(I) authorizing the Debtors to obtain senior secured priming debtor-in-possession financing in an aggregate principal amount not to exceed $677.5 million pursuant to the terms and conditions of the Senior Secured Debtor-in-Possession Revolving and Term Credit Agreement attached hereto as **Exhibit A** (as amended, supplemented, or otherwise modified in accordance with its term and the terms of the Proposed DIP Orders, the "**DIP Credit Agreement**"), and all other agreements, documents, and instruments executed and delivered in connection with the DIP Credit Agreement (collectively with the DIP Credit Agreement, the "**DIP Documents**"), with such debtor-in-possession financing consisting of:

a) a first-out, asset based revolving facility in an aggregate principal amount not to exceed on the DIP Closing Date $412.5 million, subject to a reduction on the DIP Term Loan Closing Date to $350 million (the "**DIP ABL Facility**," and all extensions of credit thereunder, the "**DIP ABL Loans**"), with up to $6 million (other than the Prepetition Letters of Credit (as defined below)) available under a letter of credit sublimit plus the

[3] Copies of the Proposed DIP Orders will be made available on the Debtors' case information website at http://www.kccllc.net/Briggs.

deemed issuance of the Prepetition Letters of Credit as letters of credit issued under the DIP ABL Facility (all such letters of credit, the "**DIP Letters of Credit**"), provided that (i) not more than, on the DIP Closing Date, $383.7 million and, on the DIP Term Loan Closing Date, $321.2 million, in principal amount of the DIP ABL Facility will be made available to Briggs & Stratton Corporation (the "**North American Revolving Facility**") and (ii) not more than, both on the DIP Closing Date and on the DIP Term Loan Closing Date, $28.8 million in principal amount of the DIP ABL Facility will be made available to Briggs & Stratton AG (the "**Swiss Revolving Facility**"), among:

1. as borrowers, Briggs & Stratton Corporation and Briggs & Stratton AG (the "**Non-Debtor DIP ABL Borrower**") (collectively, "**DIP ABL Borrowers**"),

2. as guarantors, (a) Billy Goat Industries, Inc., Allmand Bros., Inc., Briggs & Stratton International, Inc., and Briggs & Stratton Tech, LLC (collectively, the "**Debtor Guarantors**") (b) Briggs & Stratton International AG, Briggs & Stratton Australia Pty. Limited ("**B&S Australia**") and Victa Ltd. and subject to customary exceptions consistent with the Prepetition ABL Agreement, each other subsidiary of the Company organized in a jurisdiction outside the United States (the "**Non-Debtor Foreign DIP Guarantors**"), and (c) to the extent not otherwise listed above, each other Debtor (the entities referenced in the immediately preceding clauses (a) through (c), together with the DIP ABL Borrowers, collectively, the "**DIP Guarantors**," and together with the Debtor DIP ABL Borrowers, the "**DIP ABL Loan Parties**"),[4]

3. as administrative agent and collateral agent, JPMorgan Chase Bank, N.A. (in such capacity, the "**DIP Agent**"),

4. as lead-left arranger and lead-left bookrunner, JPMorgan Securities LLC (the "**DIP Arranger**"),

5. as swingline lender, JP Morgan Chase Bank, N.A. (the "**Swingline Lender**"), and

6. the lenders from time to time party thereto (collectively with the Swingline Lender, the "**DIP ABL Lenders**" and

[4] In addition and notwithstanding the foregoing, the Debtors shall guaranty the Swiss Revolving Facility and B&S Switzerland and the Non-Debtor Foreign Subsidiary Guarantors shall guaranty the North American Revolving Facility.

collectively with the DIP Agent and all other secured parties in connection with the DIP ABL Facility, collectively, the "**DIP ABL Secured Parties**"); and

b) a superpriority senior secured priming last-out term loan facility in an aggregate principal amount of $265 million (the "**DIP Term Loan Facility**," and together with the DIP ABL Facility, the "**DIP Facilities**"; all extensions of credit under the DIP Term Loan Facility, the "**DIP Term Loans**," and together with the DIP ABL Loans, the "**DIP Loans**"), among:

1. as borrower, Briggs & Stratton Corporation (the "**DIP Term Loan Borrower**," and together with the DIP ABL Borrowers, the "**DIP Borrowers**"),

2. as guarantors, the DIP Guarantors (together with the DIP Term Loan Borrower, the "**DIP Term Loan Parties**"; the DIP Term Loan Parties and the DIP ABL Loan Parties are collectively referred to herein as the "**DIP Loan Parties**"),

3. as administrative agent and collateral agent, the DIP Agent,

4. as sole lead arranger and sole bookrunner, the DIP Arranger, and

5. the lenders from time to time party thereto (the "**DIP Term Loan Lenders**," and together with the DIP ABL Lenders, the "**DIP Lenders**" and the DIP Term Loan Lenders, the DIP Agent and all other secured parties in connection with the DIP Term Loan Facility, collectively, the "**DIP Term Secured Parties**");

(II) authorizing the Debtors to borrow (a) up to $158 million under the DIP ABL Facility, of which $137 million will be made available to the Company under the North American Revolver Facility and $21 million will be made available to Briggs & Stratton AG under the Swiss Revolving Facility, and (b) up to $20 million under the DIP Term Loan Facility (the "DIP Term Interim Funding Amount"), each upon entry of this Order;

(III) authorizing the Debtors to use Cash Collateral (as defined in the Proposed DIP Orders) and all other Prepetition Collateral (as defined in the Proposed DIP Orders) pursuant to section 363 of the Bankruptcy Code and in accordance with the Proposed DIP Orders to repay the Prepetition ABL Obligations;[5]

[5] Pursuant to the Proposed Interim DIP Order, the Debtors stipulate and agree that, as of the Petition Date, the Debtors were truly and justly indebted and liable to the Prepetition Secured Parties, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $325,897,815.58 in respect of loans, other

(IV) authorizing the Debtors, upon entry of the Proposed Final DIP Order and the funding of the DIP Term Loans, to repay in full in cash all then-outstanding Prepetition ABL Obligations (the "**Roll-Up**");

(V) authorizing the Debtors to provide adequate protection to the Prepetition Secured Parties (as defined in this clause) under the Revolving Credit Agreement, dated as of September 27, 2019 (as amended supplemented or otherwise modified prior to the Petition Date, the "**Prepetition ABL Agreement**," and together with all security, pledge, and guaranty agreements and all other documentation executed in connection therewith (including all "**Loan Documents**" under, and as defined in, the Prepetition ABL Agreement), each as amended, supplemented, or otherwise modified, the "**Prepetition ABL Documents**"), among (A) the Company and the subsidiary borrowers and guarantors from time to time party thereto (collectively, the "**Prepetition ABL Loan Parties**"), (B) the lenders from time to time party thereto (the "**Prepetition ABL Lenders**"), and (C) JPMorgan Chase Bank, N.A., as administrative agent and collateral agent for the Prepetition ABL Lenders (in such capacity, the "**Prepetition ABL Agent**," and together with the Prepetition ABL Lenders and all other secured parties under the Prepetition ABL Documents, the "**Prepetition Secured Parties**");

(VI) subject to the Carve-Out, the Termination Payment and the Expense Reimbursement Payment (each as defined in the Proposed DIP Orders), granting to the DIP Agent, the DIP Lenders and all other secured parties under the DIP Documents (collectively, the "**DIP Secured Parties**"), pursuant to section 364 of the Bankruptcy Code, allowed superpriority administrative expense claims in respect of all DIP Obligations (as defined in the Proposed DIP Orders) and valid, enforceable, non-avoidable, and automatically perfected security interests in and liens on all of the DIP Collateral (as defined in the Proposed DIP Orders) to secure the DIP Obligations, in each case as and to the extent set forth in the Proposed DIP Orders;

(VII) authorizing the DIP Agent, on behalf of the DIP Secured Parties and subject to the terms and conditions herein, to exercise remedies under the DIP Documents and the Proposed DIP Orders upon the occurrence and during the continuance of an Event of Default (as defined in the DIP Credit Agreement) (the "**DIP Event of Default**");

(VIII) Upon entry of the Proposed Final DIP Order, and subject to the Carve Out, the Termination Payment and the Expense Reimbursement Payment (each as defined in the Proposed DIP Orders), authorizing the Debtors to waive (a) their right to surcharge the Prepetition Collateral (as defined in the Proposed DIP Orders)

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extensions of credit made, letters of credit issued (the "**Prepetition Letters of Credit**"), and other financial accommodations made, in each case pursuant to the Prepetition ABL Documents, plus accrued and unpaid interest thereon and any fees and expenses (including fees and expenses of attorneys) related thereto as provided in the Prepetition ABL Documents, plus all other outstanding amounts that would constitute "Obligations" under, and as defined in, the Prepetition ABL Agreement (collectively, the "**Prepetition ABL Obligations**").

pursuant to section 506(c) of the Bankruptcy Code and (b) any "equities of the case" exception under section 552(b) of the Bankruptcy Code;

(IX) scheduling, pursuant to Bankruptcy Rule 4001, a final hearing (the "**Final Hearing**") for this Court to consider entry of the Proposed Final DIP Order authorizing and approving on a final basis the relief requested in this Motion, including without limitation, for the DIP Borrowers to borrow the balance of the DIP Loans and use the proceeds of the DIP Term Loans to repay the Prepetition ABL Obligations in full in cash; and

(X) granting related relief.

11. In support of this Motion, the Debtors respectfully submit the *Declaration of Jeffrey Lewis In Support of Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief* (the "**Lewis Declaration**"), filed contemporaneously herewith.

12. The Debtors also filed the *Motion of Debtors for Entry of Order Authorizing Debtors to File Under Seal Fee Letter Relating to Motion of Debtors for Interim and Final Orders (I) Authorizing Debtors to Obtain Postpetition Financing, (II) Authorizing Debtors to Use Cash Collateral, (III) Granting Liens and Superpriority Claims, (IV) Granting Adequate Protection to Prepetition Secured Parties, (V) Modifying Automatic Stay, (VI) Scheduling Final Hearing, and (VII) Granting Related Relief*, contemporaneously herewith, seeking to file under seal the Fee Letter related to the DIP ABL Facility.

Debtors' Prepetition Secured Indebtedness

13. Briggs & Stratton Corporation, a Wisconsin corporation (the "**Lead Borrower**" or "**BSC**"), Briggs & Stratton AG, a Swiss corporation (the "**Swiss Borrower**", and together with the Lead Borrower, the "**Borrowers**" and each a "**Borrower**"), the lenders party thereto from time to time (the "**ABL Lenders**"), the Issuing Banks party thereto and JPMorgan

Chase Bank, N.A. ("**JPMorgan**"), as the Administrative Agent, the Collateral Agent, the Australian Security Trustee and Swingline Lender are parties to the Revolving Credit Agreement, dated as of September 27, 2019 (as amended by Amendment No.1 to Revolving Credit Agreement, dated as of November 15, 2019, Amendment No.2 to Revolving Credit Agreement, dated as of January 29, 2020, Amendment No. 3 to Revolving Credit Agreement, dated as of April 21, 2020, Amendment No. 4 to Revolving Credit Agreement, dated as of April 27, 2020, Amendment No. 5 to Revolving Credit Agreement, dated as of June 12, 2020, and as further amended, restated, amended and restated, supplemented or otherwise modified from time to time, the "**ABL Credit Agreement**").

14. Under the ABL Credit Agreement, the ABL Lenders agreed to provide the Borrowers revolving loans in an aggregate principal amount not to exceed $500 million with a letter of credit sublimit of $55 million (the "**ABL Credit Facility**"), consisting of a $468 million North American revolving facility with a letter of credit sublimit of $53 million (the "**North American ABL Credit Facility**") and a $32 million Swiss revolving facility with a letter of credit sublimit of $2 million (the "**Swiss ABL Credit Facility**"), in each case, subject to a borrowing base consisting of certain eligible cash, accounts, inventory, equipment, trademarks and real estate. The ABL Credit Facility is scheduled to mature on September 27, 2024, subject to a springing maturity date of September 15, 2020 if any of the Unsecured Notes (as defined below) remain outstanding and unreserved under the ABL Credit Agreement.

15. The Lead Borrower's obligations under (i) the North American ABL Credit Facility and (ii) certain currency, interest rate protection or other swap or hedging agreements, cash management arrangements and other bank products (collectively, the "**Bank Product Obligations**") entered into by the U.S. Loan Parties (as defined below) (the "**US Bank**

Product Obligations") are guaranteed by Billy Goat and Allmand Bros. (collectively, with the Lead Borrower and Billy Goat, the "**U.S. Loan Parties**") and are secured by first priority liens on substantially all the U.S. Loan Parties' assets (the "**U.S. Collateral**").

16. The Swiss Borrower's obligations under (i) the Swiss ABL Credit Facility and (ii) certain Bank Product Obligations entered into by Non-U.S. Loan Parties (as defined below) (the "**Non-U.S. Bank Product Obligations**"), are guaranteed by the U.S. Loan Parties, Briggs & Stratton International AG, a Swiss corporation ("**B&S International**"), Briggs & Stratton Australia Pty. Limited, an Australian proprietary limited company ("**B&S Australia**"), and Victa Limited, an Australian limited company (collectively with the Swiss Borrower, B&S International, and B&S Australia, the "**Non-U.S. Loan Parties**," and together with the U.S. Loan Parties, the "**Loan Parties**") and are secured by first priority liens on (i) substantially all the Non-U.S. Loan Parties' (other than B&S International)[6] assets (collectively, with the U.S. Collateral, the "**Collateral**") and (ii) the U.S. Collateral.

17. The Collateral includes, among other things, all right, title and interest in all accounts, chattel paper, cash and deposit accounts, documents and documents of title, equipment, fixtures, goods, general intangibles and intangibles (including intellectual property), instruments, inventory, investment property, letters of credit, commercial tort claims, books and records, and other property and the proceeds thereof. The Collateral excludes, among other things, U.S. real property with a fair market value less than $5 million (subject to certain exceptions) and non-U.S. real property, motor vehicles and other assets subject to certificates of title (other than to the extent the security interest can be perfected under the Uniform Commercial Code or other applicable law by the filing of a financing statement), certain deposit,

[6] B&S International has only provided an unsecured guaranty.

securities and commodity accounts and the equity interest of certain subsidiaries and joint ventures. No Non-U.S. Loan Party (i) has any joint and several liability under the ABL Credit Facility for the obligations of the U.S. Loan Parties under the ABL Credit Facility; or (ii) guarantees an obligation under the ABL Credit Facility with respect to the obligations of the U.S. Loan Parties under the ABL Credit Facility. No assets of any Non-U.S. Loan Party or any equity interests of any Non-U.S. Loan Party (with certain exceptions) are collateral under the ABL Credit Facility for the obligations of the U.S. Loan Parties under the ABL Credit Facility.

18. As of the Petition Date, (a) the aggregate amount outstanding under the ABL Credit Facility is approximately $325,897,815 in unpaid principal, plus accrued and unpaid interest, fees and other expenses, consisting of approximately (i) $260,397,936 in outstanding loans under the North American ABL Credit Facility, (ii) $53,000,000 in outstanding but undrawn letters of credit issued under the North American ABL Credit Facility, (iii) $12,399,878 in outstanding loans under the Swiss ABL Credit Facility and (iv) $100,000 in outstanding but undrawn letters of credit issued under the Swiss ABL Credit Facility and (b) the aggregate amount of outstanding Bank Product Obligations is approximately $26,000,000.

Summary Terms of DIP Facilities[7]

19. Pursuant to Bankruptcy Rule 4001(b), (c) and (d), the below chart contains a summary of the material terms of the proposed DIP Facilities, together with references to the applicable sections of the relevant source documents, as required by Bankruptcy Rules 4001(b)(1)(B) and 4001(c)(1)(B):

[7] The summaries contained in this Motion are qualified in their entirety by the provisions of the documents referenced, including the DIP Documents and the Proposed DIP Orders, respectively. To the extent anything in this Motion is inconsistent with such documents, the terms of the applicable documents shall control. Capitalized terms used in this summary chart but not otherwise defined have the meanings ascribed to them in the DIP Documents or the Proposed DIP Orders, as applicable.

Bankruptcy Code	Summary of Material Terms
Borrowers Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Facility: Briggs & Stratton Corporation and Briggs & Stratton AG DIP Term Loan Facility: Briggs & Stratton Corporation *See* DIP Credit Agreement § 1.01
Guarantors Bankruptcy Rule 4001(c)(1)(B)	Billy Goat Industries, Inc., Allmand Bros., Inc., Briggs & Stratton International, Inc., Briggs & Stratton Tech, LLC, and each other subsidiary of Briggs & Stratton Corporation incorporated or otherwise organized under the laws of any State within the United States, subject to exceptions to be agreed upon by Briggs & Stratton Corporation and the DIP Agent prior to the Petition Date and (b) Briggs & Stratton International AG, Briggs & Stratton Australia Pty. Limited and Victa Ltd. and, subject to customary exceptions consistent with the Prepetition Credit Agreement, each other subsidiary of Briggs & Stratton Corporation organized in a jurisdiction outside the United States *See* DIP Credit Agreement § 1.01
DIP Lenders Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Facility: JPMorgan Chase Bank, N.A. and each other lender under the Prepetition Credit Agreement that elects to participate as a lender in the DIP ABL Facility. DIP Term Loan Facility: Each Lender that has a DIP Term Commitment and/or DIP Term Loans at such time. *See* DIP Credit Agreement § 1.01
DIP Agent Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Facility: JPMorgan Chase Bank, N.A. DIP Term Loan Facility: JPMorgan Chase Bank, N.A. *See* DIP Credit Agreement § 1.01
Facilities Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Facility: Superpriority senior secured priming first-out asset-based revolving credit facility in an aggregate principal amount not to exceed on the DIP Closing Date $412,500,000, subject to a reduction on the DIP Term Loan Closing Date to $350,000,000 • North American Revolving Commitment: The aggregate amount of the Revolving Lenders' North American Revolving Commitments (x) on the DIP Closing Date is $383,700,000 and (y) subject to reduction as provided in Section 2.07, on the DIP Term Loan Closing Date will be $321,200,000. • Swiss Revolving Facility: The aggregate amount of the Revolving Lenders' Swiss Revolving Commitments (x) on the DIP Closing Date is $28,800,000 and (y) subject to reduction as provided in Section 2.07, on the DIP Term Loan Closing Date will be $28,800,000. • Letter of Credit Sublimit: $6,000,000 (other than in the case of Prepetition Letters of Credit deemed issued under the DIP ABL Facility), consisting of North American LC Exposure not to exceed $4,000,000 and Swiss LC Exposure not to exceed $2,000,000.

Bankruptcy Code	Summary of Material Terms
	DIP Term Loan Facility: A superpriority senior secured priming last-out term credit facility in an aggregate amount on the DIP Closing Date of $265,000,000. *See* DIP Credit Agreement Recitals, § 1.01 and § 2.13(b)
Interim Availability Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B)	DIP ABL Facility: Upon entry of the Interim DIP Order, (i) $137,000,000 under the North American Revolving Facility plus the amount of any Prepetition Letters of Credit deemed issued under the DIP ABL Facility and (ii) $21,000,000 under the Swiss Revolving Facility *See* DIP Credit Agreement § 2.01(c) DIP Term Loan Facility: Upon entry of the Interim DIP Order, $20,000,000 principal amount of DIP Term Loans Facility will be funded by the DIP Term Lender upon the DIP Term Loan Closing Date *See* DIP Credit Agreement § 2.01(a)(iii)
Aggregate First Out Obligations Bankruptcy Rule 4001(c)(1)(B)	Caps the amount of (a) Aggregate Exposure (Outstanding Amount of all Loans plus LC Exposure) and (b) prior to the occurrence of the DIP Term Loan Closing Date, the amount of the Prepetition Obligations, and on and after the occurrence of the DIP Term Loan Closing Date, the amount of Reinstated Prepetition Obligations, that, in each case, will be ahead of the DIP Term Loan Facility at (a) prior to the occurrence of the DIP Term Loan Closing Date, $390,000,000 and (b) on and after the occurrence of the DIP Term Loan Closing Date, $320,000,000, in each case of clauses (a) and (b), unless such amount is increased in writing by the Required DIP Term Lenders. *See* DIP Credit Agreement § 1.01 and § 10.14
Fees Bankruptcy Rule 4001(c)(1)(B)	Unused Line Fees: 0.25% (during the Interim Period the unused line fee will only be earned on the portion of the undrawn interim DIP amount) LC and Fronting Fees: 0.125% per annum on the average daily amount of the North American LC Exposure and the Swiss LC Exposure Term Loan Closing Fee: 2.00% of the aggregate principal amount of the DIP Term Loans funded by such DIP Term Lender (including the Interim DIP Term Loans previously funded by such DIP Term Lender) on the DIP Term Loan Closing Date. Additional fees pursuant to the Fee Letter. *See* DIP Credit Agreement § 2.05
Borrowing Base Bankruptcy Rule 4001(c)(1)(B)	"Borrowing Base" means any of the U.S. Borrowing Base, the Australian Borrowing Base and the Swiss Borrowing Base, as applicable. "U.S. Borrowing Base" means, at any time of calculation, an amount equal to the sum of, without duplication: (a) (i) the book value of all Eligible Accounts of the U.S. Loan Parties owing by an Account Debtor that has an Investment Grade Rating multiplied by the advance rate of 90% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 95%) plus (ii) the book value of all other Eligible

Bankruptcy Code	Summary of Material Terms
	Accounts of the U.S. Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus (b) the lesser of (i) the Cost of Eligible Inventory of the U.S. Loan Parties multiplied by the advance rate of 75% and (ii) the Cost of Eligible Inventory of the U.S. Loan Parties multiplied by the appraised NOLV Percentage of Eligible Inventory of the U.S. Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus (c) solely during the Interim Period, the U.S. Fixed Asset Advance; minus (d) any Reserves pertaining to the U.S. Loan Parties established from time to time by the Administrative Agent in accordance herewith (without duplication of any Reserves deducted in the calculation of any other Borrowing Base); provided that in no event will the U.S. Fixed Asset Advance exceed $150,000,000 at any time. U.S. Fixed Asset Advance" means, at any time of calculation, an amount equal to the sum of, without duplication: (ii) the applicable Equipment Amortization Factor for Eligible Equipment of the U.S. Loan Parties multiplied by 85% of the NOLV Percentage of such Eligible Equipment; plus (iii) the applicable Real Property Amortization Factor for Eligible Real Property of the U.S. Loan Parties multiplied by 75% of the fair market value of such Eligible Real Property, determined based on the most recent real estate appraisal completed by the Administrative Agent in accordance with **Error! Reference source not found.Error! Reference source not found.**; plus (iv) the applicable Trademark Amortization Factor for Eligible Trademarks of the U.S. Loan Parties and the Australian Loan Parties multiplied by 50% of the NOLV Percentage of such Eligible Trademarks. "Australian Borrowing Base" means, at any time of calculation, an amount equal to the sum of, without duplication: (a) (i) the book value of all Eligible Accounts of the Australian Loan Parties owing by an Account Debtor that has an Investment Grade Rating multiplied by the advance rate of 90% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 95%) plus (ii) the book value of all other Eligible Accounts of the Australian Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus (b) the lesser of (i) the Cost of Eligible Inventory of the Australian Loan Parties multiplied by the advance rate of 75% and (ii) the Cost of Eligible Inventory of

Bankruptcy Code	Summary of Material Terms
	the Australian Loan Parties multiplied by the appraised NOLV Percentage of Eligible Inventory of the Australian Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); minus (c) any Reserves pertaining to the Australian Loan Parties established from time to time by the Administrative Agent in accordance herewith (without duplication of any Reserves deducted in the calculation of any other Borrowing Base). "Swiss Borrowing Base" means, at any time of calculation, an amount equal to the sum of, without duplication: (d) (i) the book value of all Eligible Accounts of the Swiss Borrower owing by an Account Debtor that has an Investment Grade Rating multiplied by the advance rate of 90% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 95%) plus (ii) the book value of all other Eligible Accounts of the Swiss Borrower multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus (e) the lesser of (i) the Cost of Eligible Inventory of the Swiss Borrower multiplied by the advance rate of 75% and (ii) the Cost of Eligible Inventory of the Swiss Borrower multiplied by the appraised NOLV Percentage of Eligible Inventory of the Swiss Borrower multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); minus (f) any Reserves pertaining to the Swiss Borrower established from time to time by the Administrative Agent in accordance herewith (without duplication of any Reserves deducted in the calculation of any other Borrowing Base). *See* DIP Credit Agreement § 1.01
Cash Dominion Bankruptcy Rule 4001(b)(l)(B)(iii), 4001(c)(1)(B)	In effect at all times during the Interim Period and, on and after the entry of the Final Order, springing if Aggregate Availability is less than the greater of (i) 10% of the Line Cap and (ii) $40 million or during the occurrence and continuation of any Event of Default *See* DIP Credit Agreement § 1.01 and § 9.18(c)
Interest Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Facility: LIBOR + 3.50% per annum, payable monthly in arrears, with a 1.00% floor DIP Term Loan Facility: LIBOR + 7.00% per annum, payable monthly in arrears, with a 1.00% floor *See* DIP Credit Agreement § 1.01 and § 2.06
Call Protection Bankruptcy Rule	DIP ABL Facility: None

Bankruptcy Code	Summary of Material Terms
4001(c)(1)(B)	DIP Term Loan Facility: 101% hard call (unless any prepayment is made with the proceeds of a Qualified Sale in which the Stalking Horse Bidder is the winning bidder) *See* DIP Credit Agreement § 2.09(e)
Maturity Bankruptcy Rule 4001(c)(1)(B)	Earlier of (i) the date that is 9 months following the Petition Date, and (ii) the effective date of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court *See* DIP Credit Agreement § 1.01
DIP Budget Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Facility: A 13-week budget, updated every Thursday after the Petition Date (starting with the second full week following the Petition Date). DIP Term Loan Facility: An extended version of the Initial Approved Budget that contains the same projections as the Initial Approved Budget for the first 13 weeks of the Chapter 11 Cases but also includes projections for the remaining period between the Petition Date and November 20, 2020 (the "DIP Term Budget"). *See* Interim DIP Order § 17
DIP Budget Covenant Bankruptcy Rule 4001(c)(1)(B)	DIP ABL Budget Covenant: The Debtors' compliance with the Approved ABL Budget then in effect will be tested every Thursday of each week, starting with the second full week following the Petition Date, for the period beginning as of the first full week after the Petition Date and ending the week prior to the week on which compliance is tested (each, a "Testing Period") (such covenant, the "DIP ABL Budget Covenant"). Each date on which compliance with the Approved ABL Budget then in effect is tested is referred to herein as a "ABL Testing Date." (i) On the ABL Testing Date in the second full week following the Petition Date, the cumulative actual Net Operating Cash Flow during the applicable Testing Period will not be less than 70% of the cumulative estimated Net Operating Cash Flow set forth in the Approved ABL Budget then in effect for such Testing Period; (ii) On the ABL Testing Date in the third full week following the Petition Date, the cumulative actual Net Operating Cash Flow during the applicable Testing Period will not be less than 75% of the cumulative estimated Net Operating Cash Flow set forth in the Approved ABL Budget then in effect for such Testing Period; and (iii) On each ABL Testing Date in and following the fourth full week following the Petition Date, the cumulative actual Net Operating Cash Flow during the applicable Testing Period shall not be less than 80% of the cumulative estimated Net Operating Cash Flow set forth in the Approved ABL Budget then in effect for such Testing Period. DIP Term Loan Facility: On the first Thursday of each month commencing with the first full month following the month in which the Final DIP Order is entered (each, a "Term Testing Date"), the Debtors' actual cumulative Net Operating Cash Flow less Cash Bankruptcy Disbursements (the "Net Cash Flow") between the Petition Date and the last day of the immediately preceding month (each, a "Term Test Period") will not be less than the Debtors' projected Net Cash Flow during each Term Test Period set

Bankruptcy Code	Summary of Material Terms
	forth in the DIP Term Budget by more than the "Available Variance Amount" (the "DIP Term Budget Covenant," and together with the DIP ABL Budget Covenant, the "DIP Budget Covenants"). The "Available Variance Amount" means, as of any Term Testing Date, (i) $50,000,000, plus or minus, as applicable, (ii) the aggregate amount by which the Debtors' actual cumulative Net Cash Flow for the applicable Term Test Period was less than or greater than, as applicable, the Debtors' projected cumulative Net Cash Flow for such Term Test Period set forth in the DIP Term Budget. As provided in the DIP Credit Agreement, each of the DIP ABL Lenders and the DIP Term Lenders, respectively, will have the right to call a DIP Event of Default resulting from any breach of the DIP Term Budget Covenant. *See* Interim DIP Order § 17
Financial Covenant Bankruptcy Rule 4001(c)(1)(B)	On any date (x) during the Interim Period, have Aggregate Availability of less than $22,500,000 and (y) after the last day of the Interim Period, have Aggregate Availability of less than $30,000,000. *See* DIP Credit Agreement § 10.10
Milestones Bankruptcy Rule 4001(c)(1)(B)	(a) Within five (5) days following the Petition Date, entry by the Bankruptcy Court of the Interim Order; (b) No later than August 25, 2020, entry by the Bankruptcy Court of the Bidding Procedures Order; (c) Within forty (40) days following the entry by the Bankruptcy Court of the Interim Order, entry by the Bankruptcy Court of the Final Order; (d) No later than September 15, 2020, commencement of an auction (unless no other bidder submitted a qualified bid with respect to a Qualified Sale in accordance with the Bidding Procedures Order); (e) No later than September 25, 2020, entry by the Bankruptcy Court of the Qualified Sale Order; and (f) No later than November 19, 2020 (or if the closing of the Qualified Sale will not have occurred due to the failure of the conditions to closing set forth in Section 7.1(f) and Section 7.2(d) of the Stalking Horse APA remain unsatisfied or not waived and if all other conditions to the respective obligations of the parties to the Stalking Horse APA to close thereunder that are capable of being fulfilled by such date will have been so fulfilled or waived, then no later than December 31, 2020), consummation of a Qualified Sale. *See* DIP Credit Agreement § 9.24
Events of Default Bankruptcy Rule 4001(c)(l)(B)	Usual and customary for debtor-in-possession credit facilities of these types and provided that a breach of the DIP ABL Budget Covenant and certain other ABL-specific covenants will only be an event of default with respect to the DIP Term Facility if the Required DIP ABL Lenders have exercised remedies in respect of such breach provided further, that a breach of the DIP Term Budget Covenant and certain other Term-Loan-specific covenants will only be an event of default with respect to the DIP ABL Facility if the Required DIP Term Lenders have exercised remedies in respect of such breach.

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	See DIP Credit Agreement § 11.01
Determination Regarding Prepetition Claims Bankruptcy Rule 4001(c)(l)(B)(iii)	The Interim Order contains stipulations of fact by the Debtors, including those related to the validity and enforceability of the Debtors' Prepetition ABL Obligations. *See* Interim DIP Order § 7
Roll-Up Bankruptcy Rule 4001(c)(1)(B)	The Interim DIP Order includes a partial repayment of Prepetition ABL Obligations from all cash, collections, and proceeds of the Prepetition Collateral (including Cash Collateral), and the Final Order includes a full repayment of the Prepetition ABL Obligations from proceeds of the DIP Term Loans. *See* Interim DIP Order §§ 13, 14
Adequate Protection Bankruptcy Rules 4001(b)(1)(B)(iv), 4001(c)(1)(B)(ii)	Subject in all respects to the Carve-Out, the following adequate protection to the extent of any diminution in value of the Prepetition Secured Parties' interests in the Prepetition Collateral, including Cash Collateral ("Diminution in Value"): ABL Adequate Protection Liens. A security interest in and lien upon all of the DIP Collateral to the extent of any Diminution in Value. ABL Superpriority Claims. Allowed superpriority administrative claims against each of the Debtors, subordinate only to (a) the DIP Superpriority Claims except as otherwise provided in the "waterfall" provisions in the DIP Credit Agreement, (b) the Carve-Out, and (c) any Termination Payment and Expense Reimbursement Payment (each as defined in the Stalking Horse Agreement). Prepetition Secured Party Fees and Expenses. Payment of reasonable and documented fees owed to the Prepetition ABL Agent and fees and out-of-pocket disbursements incurred by advisors to the Prepetition ABL Agent or the Prepetition ABL Lenders. Payment of Interest. Payment of (A) all accrued and unpaid interest, fees, and costs due and payable under the Prepetition ABL Agreement as of the Petition Date, in each case, calculated based on the applicable default rate set forth in the Prepetition ABL Agreement or other applicable documents; and (B) all accrued and unpaid postpetition interest, fees, and costs, in each case calculated based on the applicable rates under the Prepetition ABL Agreement, as, when and in the respective amounts due and payable under the Prepetition ABL Agreement. Reporting. Receipt of financial and all other reporting (including each Revised DIP ABL Budget), as described in the DIP Documents. *See* Interim DIP Order § 19
Credit Bid Bankruptcy Rule 4001(c)(1)(B)	The Prepetition ABL Lenders (subject to entry of the Final DIP Order) and the DIP Lenders (upon entry of the Interim DIP Order) will have the unqualified right, in accordance with the terms of the Prepetition ABL Agreement or DIP Credit Agreement, as applicable, to credit bid up to the full amount of the outstanding Prepetition ABL Obligations or respective DIP Obligations, as applicable (each such bid, a "Credit Bid") in each case pursuant to section 363(k) of the Bankruptcy Code in any sale or transfer authorized by the Court pursuant to section 363, 725, or 1123 of the Bankruptcy Code (the "Sale"); provided that (i) any Credit Bid by the Prepetition ABL Lenders must include cash in an amount sufficient to repay the DIP ABL Obligations in full on the

Bankruptcy Code	Summary of Material Terms
	closing date of any such sale; (ii) any Credit Bid by the DIP Term Lenders must include cash in an amount sufficient to repay the DIP ABL Obligations and Prepetition ABL Obligations in full on the closing date of any such sale; (iii) any Credit Bid by the Prepetition ABL Agent or the DIP Agent must include a commitment to provide cash consideration sufficient to pay in full any Termination Payment or Expense Reimbursement Payment approved by the Court as and when due; and (iv) any Credit Bid must comply with the provisions of the Bidding Procedures Order (as defined in the DIP Credit Agreement). *See* Interim DIP Order § 24
Carve-Out Bankruptcy Rule 4001(c)(1)(B)	The "Carve-Out" means the sum of (i) all fees required to be paid to the Clerk of the Court and to the Office of the United States Trustee under section 1930(a) of title 28 of the United States Code plus interest at the statutory rate (without regard to the notice set forth in (b) below); (ii) fees and expenses up to $50,000 incurred by a trustee under section 726(b) of the Bankruptcy Code (without regard to the notice set forth in (b) below); (iii) to the extent allowed at any time, whether by interim or final compensation order, all unpaid fees and expenses (including transaction fees or success fees earned by or payable to a Professional Person) (the "Professional Fees") incurred by persons or firms retained by the Debtors pursuant to section 327, 328 or 363 of the Bankruptcy Code (collectively, the "Debtor Professionals") and any Committee appointed in the Chapter 11 Cases pursuant to section 1102 of the Bankruptcy Code (the "Committee Professionals" and, together with the Debtor Professionals, the "Professional Persons") at any time before or on the first business day after delivery by the DIP Agent of a Carve-Out Trigger Notice (as defined below), whether allowed by the Court prior to or after delivery of a Carve-Out Trigger Notice and without regard to whether such fees and expenses are provided for in the Initial Approved DIP Budget or any Approved ABL Budget; (iv) Professional Fees incurred after the first business day following delivery by the DIP Agent (at the direction of either the Required Revolving Lenders or the Required DIP Term Lenders) of the Carve-Out Trigger Notice, to the extent allowed at any time, whether by interim order, procedural order, or otherwise (A) upon and after entry of this Order (and for the avoidance of doubt, after entry of the Final DIP Order), in an aggregate amount, excluding any success or transaction fees owed to Debtor Professionals, not to exceed $4,000,000 with respect to the Debtor Professionals and in an aggregate amount not to exceed $200,000 with respect to the Committee Professionals, plus (B) upon and after entry of the Final DIP Order, in an aggregate amount equal to any success or transaction fees owed to Debtor Professionals not to exceed $15,000,000 (the sum of such amounts, the "Post-Carve-Out Trigger Notice Cap"). *See* Interim DIP Order § 25
Challenge Period Bankruptcy Rule 4001(c)(1)(B)	The Challenge Period is the earlier of, (a) in the case of an adversary proceeding or contested matter filed by the statutory committee of unsecured creditors (the "Committee") (if any) , 60 days after the date of its formation; and (b) in the case of an adversary proceeding or contested matter filed by any parties in interest other than the Committee, 75 days after entry of the Interim DIP Order. *See* Interim DIP Order § 9.
Section 506(c) Waiver Bankruptcy Rule 4001(c)(1)(B)(iv)	The waiver of rights under section 506(c) is subject to entry of the Final DIP Order. *See* Interim DIP Order §§ 35, 41(g).

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Section 552(b) Bankruptcy Rule 4001(c)(1)(B)(iv)	Subject to entry of the Final DIP Order, (a) the Prepetition Secured Parties will be entitled to all of the rights and benefits of section 552(b) of the Bankruptcy Code, and the Debtors will not invoke the "equities of the case" exception under section 552(b) of the Bankruptcy Code with respect to the proceeds, products, offspring, or profits of any of the Prepetition Collateral or the extension of the Adequate Protection Liens to cover proceeds of the Prepetition Collateral. *See* Interim DIP Order § 34
Waiver / Modification of Automatic Stay Bankruptcy Rule 4001(c)(1)(B)(iv)	The automatic stay otherwise applicable to the DIP Secured Parties and the Prepetition Secured Parties is modified to the extent necessary to (i) exercise rights and remedies against the DIP Collateral and Prepetition Collateral (as applicable), subject to five business days' prior written notice and a hearing; and (ii) upon a DIP Event of Default, (a) declare all DIP Obligations to be due and payable; (b) refuse to extend any further DIP Loans under the DIP Facilities, and/or (c) terminate the use of Cash Collateral. *See* Interim DIP Order § 28

Debtors' Liquidity Needs and Efforts to Secure DIP Financing

20. As detailed in the Ficks Declaration and the Lewis Declaration, due to operating pressures, there has been a rapid decline in the Company's cash flow which has led to a liquidity strain on the business. The Company currently requires capital for ordinary course capital expenditures that are necessary for the continued survival of its business.

21. As discussed more fully in the Ficks Declaration, several factors have contributed to the Company's recent business challenges. These factors include: (i) headwinds related to cautious ordering patterns from channel partners, (ii) weather conditions in certain regions, (iii) the bankruptcy of Sears (one of Briggs & Stratton's largest Products Segment customers), (iv) a shift in consumer preferences leading to reductions in residential consumer engine demand (though offset by growth in commercial and larger engines and products), and (v) operational inefficiencies associated with enterprise resource planning system implementations.

22. The Company's efforts to address the above conditions were further complicated by the spread of COVID-19 and the upcoming maturity of their funded debt. Specifically, the Unsecured Notes mature in December 2020, and the ABL Credit Agreement provides for a springing maturity if any Unsecured Notes are still outstanding as of September 15, 2020 and unreserved under the ABL Credit Agreement. As a result of these pressures and conditions, the Company began to explore strategic alternatives to restructure its operations, deleverage its balance sheet, and reduce its debt burden.

23. In the months leading up to the commencement of these Chapter 11 Cases, the Company, with its advisors, including Houlihan Lokey Capital, Inc. ("**Houlihan**"), reviewed and analyzed its projected cash needs and prepared a weekly cash flow analysis to determine the need for and size of postpetition financing. The Debtors' existing liquidity is insufficient to fund the Debtors' ongoing operations and expenses during these Chapter 11 Cases. The Debtors' projected operating expenses are expected to total approximately $110 million over the first four (4) full weeks of these Chapter 11 Cases. This total includes expenses specifically arising from the commencement of these Chapter 11 Cases, such as payments contemplated under the First Day Motions, as well as professional fees and expenses. As a result, the Debtors require an immediate infusion of liquidity and access to their prepetition cash collateral to continue operating during these Chapter 11 Cases, avoid administrative insolvency, and consummate a going concern sale pursuant to section 363 of the Bankruptcy Code that will preserve jobs and maximize value for the benefit of all stakeholders.

24. In March and April 2020, the Company hired a skilled team of advisors, including Houlihan, to assist it in debt and capital matters, including raising additional capital to address its near-term liquidity needs as well as the 2020 maturity of the Unsecured Notes

(approximately $195 million aggregate principal amount outstanding). Houlihan was also tasked with working with the management team toward a restructuring and deleveraging of the Company's balance sheet if sufficient capital was not available to address the Company's liquidity and debt maturity issues in an out-of-court capital raise. The Company and its advisors evaluated strategic alternatives available to the Company in light of its financial condition, and conducted a months-long, robust process for raising capital (the "**Capital Raise Process**").

25. To address near-term liquidity challenges brought on by business conditions (including Covid-19) and provide time for the Capital Raise Process to continue, the Company entered into Amendment No. 4 to the Prepetition ABL Credit Agreement, effective as of April 27, 2020. Amendment No. 4 amended certain provisions of the Prepetition ABL Credit Agreement for the Company's benefit, including relaxing certain financial covenants. However, in exchange for such amendment, the Prepetition ABL Lenders also imposed certain requirements on the Company, including adding certain events of default with respect to raising capital. Specifically, Amendment No. 4 required that the Company consummate a raise of junior capital financing acceptable to the Prepetition ABL Lenders by June 15, 2020.

26. On June 12, 2020, to provide it with flexibility to continue discussions with its stakeholders and allow the Capital Raise Process to continue, the Company and the Prepetition ABL Lenders entered into Amendment No. 5 to the Prepetition ABL Credit Agreement, which provided, among other things, that the deadline for raising junior capital would be extended to July 15, 2020.[8]

[8] In addition to extending the deadline to raise junior capital, the following amendments were included in Amendment No. 5 to the Prepetition ABL Credit Agreement: (i) the required borrowing availability that BSC and its subsidiaries must maintain under the revolving credit facility was increased to at least $22.5 million; (ii) the maximum aggregate amount available for borrowing or letters of credit under the revolving credit facility that the Prepetition ABL Credit Agreement was reduced by (a) $50 million to $550 million as of June 12, 2020 and (b) an additional $50 million to $500 million as of July 15, 2020; and (iii) the applicable margins paid to lenders as part of

27. On July 14, 2020, to provide it with flexibility to continue discussions with its stakeholders and allow the Capital Raise Process to continue, the Company and the Prepetition ABL Lenders entered into Amendment No. 6 to the Prepetition ABL Credit Agreement, which provided, among other things, that the deadline for raising junior capital would be extended to July 19, 2020.[9]

28. As part of the Capital Raise Process, Houlihan contacted over 100 potential investors, including purchasers of assets, and prepared extensive materials and numerous analyses to assist and encourage investors to submit proposals. On May 15, 2020, the Company received eight term sheets in satisfaction of the milestone in the Amendment No. 4 to the Prepetition ABL Credit Agreement. Subsequently, it distributed the business plan on May 18, 2020, and requested term sheets by May 29, 2020 that provided solutions for both of the following: (a) incremental liquidity to fund the Company's long-term business plan and (b) the $195 million of Unsecured Notes and related springing maturity. By May 29, 2020, the Company had received eight proposals from the entities that had provided the term sheets it had received previously, all of which called for an in-court solution through a chapter 11 filing.

29. At the same time, the Company determined that, based on investor feedback, an out-of-court refinancing transaction was not viable, primarily due to the amount of capital required, the collateral available to support junior capital financing, significant unsecured liabilities, the expiration of the grace period on the interest payment due under the Senior Notes,

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the variable interest rates were increased for (a) LIBOR borrowings to 550 basis points and (b) base rate borrowings to 450 basis points, in each case effective on and after July 15, 2020.

[9] In addition to extending the deadline to raise junior capital, the following amendments were included in Amendment No. 6 to the Prepetition ABL Credit Agreement: (i) all borrowings by BSC to bear interest based on the base rate instead of LIBOR; and (ii) the occurrence of any cross-default that would otherwise arise due to the BSC's non-payment of interest on its 6.875% senior notes due 2020 on July 15, 2020 was waived, unless the note holders take certain enforcement actions as a result of such non-payment.

and the milestone of July 15, 2020. Given these dynamics, the Company determined that a chapter 11 process was its only alternative. From May 29, 2020 to June 25, 2020, interested parties performed comprehensive diligence in advance of submitting a more comprehensive DIP proposal. This diligence included: (a) 45-plus hours of diligence calls and meetings with the Company's personnel, including six site visits (five of which were in-person) and an audit workpaper review; and (b) 650-plus diligence questions asked, the vast majority of which were addressed by the Company and its advisors.

30. Of the eight proposals the Company received on May 29, 2020: (a) only two were solely for DIP financing; (b) one sought only a change of control; and (c) the remaining five provided for both DIP financing and change of control provisions. At that point, the Company and its advisors requested a DIP financing proposal from JPMorgan as agent for the ABL Lenders. In response, JPMorgan provided the Company a proposal for a $450 million DIP ABL facility and a $250 million DIP FILO facility (the "**JPMorgan DIP Proposal**"). The JPMorgan DIP Proposal would provide a pay down to the current ABL Lenders, liquidity for a chapter 11 process, and a potential change-of-control if the facility was not fully repaid upon emergence from chapter 11. In evaluating the DIP proposals, the Company and Houlihan analyzed, among other things, the economics of the DIP proposals and the up-front fees. The JPMorgan DIP Proposal offered superior economic terms to any of the other DIP financing proposals received by the Debtors. Moreover, given that JPMorgan and the other ABL Lenders are the Debtors' incumbent lenders, certain other DIP proposals would have had to prime JPMorgan, which would have led to a potential priming litigation.

31. The Debtors and their advisors actively negotiated to secure favorable terms on the DIP financing from JPMorgan, and were ultimately able to obtain concessions on a

number of key provisions, including certain costs, fees, and an increase in the FILO amount to $265 million. The Debtors ultimately agreed to a reasonable proposal from JPMorgan that meets the Debtors' liquidity needs at this critical juncture.

32. Simultaneously, JPMorgan commenced a best efforts syndication of the DIP Term Loan Facility in the week prior to the commencement of these Chapter 11 Cases. However, several days into the syndication process, Bucephalus Buyer, LLC, an affiliate of KPS Capital Partners, LP ("**KPS**"), as the stalking horse bidder for the Debtors' assets, provided a firm commitment to participate in the DIP FILO and ultimately offered to fund the full amount of the DIP Term Loan Facility on the same terms as had been agreed upon with JPMorgan (the "**KPS DIP Proposal**"). This accommodation from KPS provided the Company with assurance at the inception of these Chapter 11 Cases that it would have the necessary liquidity to operate and run a value-maximizing sale process and save on arrangement and underwriting fees, with the knowledge that the DIP terms had been negotiated in good faith and at arm's length with JPMorgan.

Relief Requested Should Be Granted

A. Debtors Should Be Authorized to Obtain Postpetition Financing Through the DIP Facilities

33. The Debtors satisfy the requirements for relief under section 364 of the Bankruptcy Code, which authorizes a debtor to obtain secured or superpriority financing under certain circumstances. The Debtors were unable to procure sufficient financing in the form of unsecured credit, which would be allowable under section 503(b)(1) or as an administrative expense, in accordance with sections 364(a) or (b) of the Bankruptcy Code. *See* 11 U.S.C. §§ 364(a)-(b), 503(b)(1). Having determined that postpetition financing was only available pursuant to sections 364(c) and (d) of the Bankruptcy Code, the Debtors negotiated with the DIP

Lenders to secure the DIP Facilities on the terms described herein. For these reasons, as discussed further below, the Debtors satisfy the necessary conditions under sections 364(c) and 364(d) for authority to enter into the DIP Facilities.

I. Entry Into the DIP Facilities Is a Sound Exercise of Business Judgment

34. The Court should authorize the Debtors, as an exercise of their sound business judgment, to enter into the DIP Documents, obtain access to the DIP Facilities, and continue using the Cash Collateral. Section 364 of the Bankruptcy Code authorizes a debtor to obtain secured or superpriority financing under certain circumstances discussed in detail below. Courts grant a debtor-in-possession considerable deference in acting in accordance with its business judgment in obtaining postpetition secured credit, so long as the agreement to obtain such credit does not run afoul of the provisions of, and policies underlying, the Bankruptcy Code. *See, e.g., In re Los Angeles Dodgers LLC*, 457 B.R. 308, 313 (Bankr. D. Del. 2011) ("[C]ourts will almost always defer to the business judgment of a debtor in the selection of the lender."); *In re Trans World Airlines, Inc.*, 163 B.R. 964, 974 (Bankr. D. Del. 1994) (approving a postpetition loan and receivables facility because such facility "reflect[ed] sound and prudent business judgment"); *In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 40 (Bankr. S.D.N.Y. 1990) ("[C]ases consistently reflect that the court's discretion under section 364 is to be utilized on grounds that permit reasonable business judgment to be exercised so long as the financing agreement does not contain terms that leverage the bankruptcy process and powers or its purpose is not so much to benefit the estate as it is to benefit a party-in-interest."); *In re Farmland Indus., Inc.*, 294 B.R. 855, 886 (Bankr. W.D. Mo. 2003) (noting, in the context of a debtor's decision to enter into an amendment to a postpetition financing agreement, that "[b]usiness judgments should be left to the board room and not to this Court").

35. Courts emphasize that the business judgment rule is not an onerous standard and may be satisfied "'as long as the proposed action appears to enhance the debtor's estate.'" *Crystalin, LLC v. Selma Props. Inc. (In re Crystalin, LLC)*, 293 B.R. 455, 463–64 (B.A.P. 8th Cir. 2003) (citation omitted) (emphasis in original, text modifications removed); *see also In re AbitibiBowater*, 418 B.R. 815, 831 (Bankr. D. Del. 2009) (the business judgment standard is "not a difficult standard to satisfy").

36. Further, courts generally will not second-guess a debtor's business decisions when those decisions involve the appropriate level of care in arriving at the decision on an informed basis, in good faith, and in the honest belief that the action was taken in the best interest of the debtor. *See In re Los Angeles Dodgers LLC*, 457 B.R. at 313. To determine whether the business judgment test is met, "the court 'is required to examine whether a reasonable business person would make a similar decision under similar circumstances.'" *In re Dura Auto. Sys. Inc*., No. 06-11202 (KJC), 2007 WL 7728109, at *97 (Bankr. D. Del. Aug. 15, 2007) (citation omitted). "More exacting scrutiny would slow the administration of the debtor's estate and increase its cost, interfere with the Bankruptcy Code's provision for private control of administration of the estate, and threaten the court's ability to control a case impartially." *Richmond Leasing Co. v. Capital Bank, N.A.*, 762 F.2d 1303, 1311 (5th Cir. 1985).

37. Specifically, to determine whether the business judgment standard is met, a court need only "examine whether a reasonable business person would make a similar decision under similar circumstances." *In re Exide Techs*., 340 B.R. 222, 239 (Bankr. D. Del. 2006); *see also In re Curlew Valley Assocs*., 14 B.R. 506, 513–14 (Bankr. D. Utah 1981) (noting that courts should not second guess a debtor's business decision when that decision involves "a business judgment made in good faith, upon a reasonable basis, and within the scope of [the debtor's]

authority under the [Bankruptcy] Code"). Accordingly, "management of a corporation's affairs is placed in the hands of its board of directors and officers, and the Court should interfere with their decisions only if it is made clear that those decisions are, *inter alia*, clearly erroneous, made arbitrarily, are in breach of the officers' and directors' fiduciary duty to the corporation, are made on the basis of inadequate information or study, are made in bad faith, or are in violation of the Bankruptcy Code." *In re Farmland Indus., Inc*., 294 B.R. at 881 (Bankr. W.D. Mo. 2003) (citing *In re United Artists Theatre Co*., 315 F.3d 217, 233 (3d Cir. 2003), *Richmond Leasing Co. v. Capital Bank, N.A*., 762 F.2d 1303 (5th Cir. 1985), and *In re Defender Drug Stores, Inc*., 145 B.R. 312, 317 (B.A.P. 9th Cir. 1992)); *see also In re Food Barn Stores, Inc*., 107 F.3d 558, 567 n. 16 (8th Cir. 1997) (when the "request is not manifestly unreasonable or made in bad faith, the court should normally grant approval as long as the proposed action appears to enhance the debtor's estate").

38. Furthermore, in considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re Farmland Indus., Inc*., 294 B.R. at 886 (Bankr. W.D. Mo. 2003); *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Elingsen McLean Oil Co., Inc.)*, 65 B.R. 358, 365 n.7 (W.D. Mich. 1986) (recognizing a debtor may have to enter into "hard bargains" to acquire funds for its reorganization). The Court may also appropriately take into consideration non-economic benefits to the Debtors offered by a proposed postpetition facility. For example, in *In re ION Media Networks. Inc*., the bankruptcy court for the Southern District of New York held that:

> Although all parties, including the Debtors and the Committee, are naturally motivated to obtain financing on the best possible terms, a business decision to obtain credit from a particular lender is almost never based purely on economic terms. Relevant features of the

> financing must be evaluated, including non-economic elements such as the timing and certainty of closing, the impact on creditor constituencies and the likelihood of a successful reorganization. This is particularly true in a bankruptcy setting where cooperation and establishing alliances with creditor groups can be a vital part of building support for a restructuring that ultimately may lead to a confirmable reorganization plan. That which helps foster consensus may be preferable to a notionally better transaction that carries the risk of promoting unwanted conflict.

No. 09-13125, 2009 WL 2902568, at *4 (Bankr. S.D.N.Y. July 6, 2009) (emphasis added).

39. The Debtors' determination to move forward with the DIP Facilities in these Chapter 11 Cases is an exercise of their sound business judgment following an arm's-length process and careful evaluation of alternatives. Specifically, the Debtors and their advisors determined that postpetition financing will create certainty with respect to cash flows necessary for the administration of these Chapter 11 Cases through a sale and a subsequent confirmation of a chapter 11 plan. The Debtors negotiated the DIP Documents with the DIP Lenders in good faith, at arm's length, and with the assistance of their respective advisors, and the Debtors believe that they have obtained the best financing available under the circumstances. Accordingly, the Court should authorize the Debtors' entry into the DIP Documents as it is a reasonable exercise of the Debtors' business judgment. *See* Lewis Decl. ¶ 40.

II. Debtors Should Be Authorized to Obtain Postpetition Financing on a Secured and Superpriority Basis

40. Section 364(c) of the Bankruptcy Code authorizes a debtor to obtain postpetition financing on a secured or superpriority basis, or both, where the Court finds, after notice and a hearing, that the debtors are "unable to obtain unsecured credit allowable under section 503(b)(1) of the [the Bankruptcy Code] . . . ." 11 U.S.C. § 364(c). Courts have articulated a three-part test to determine whether a debtor is entitled to financing under section 364 of the Bankruptcy Code, considering whether (a) the debtor made a reasonable effort but

could not obtain unencumbered credit or alternative financing without superpriority status, (b) the proposed transaction benefits the debtor as necessary to preserve assets of the estate, and (c) the terms of the credit agreement are fair, reasonable, and adequate, given the circumstances of the debtor-borrower and proposed lenders. *See, e.g., In re Los Angeles Dodgers LLC*, 457 B.R. at 312; *In re Aqua Assoc*., 123 B.R. 192, 195−99 (Bankr. E.D. Pa. 1991); *In re St. Mary Hosp*., 86 B.R. 393, 401-02 (Bankr. E.D. Pa. 1988); *In re Crouse Grp., Inc*., 71 B.R. 544, 549−51 (Bankr. E.D. Pa. 1987); *see also In re Ames Dep't Stores*, 115 B.R. at 37−40.

41. Notably, "[s]ection 364(d) 'does not require that debtors seek alternative financing from every possible lender. However, the debtor must make an effort to obtain credit without priming a senior lien.'" *In re Republic Airways Holdings Inc*., No. 16-10429 (SHL), 2016 WL 2616717, at *11 (Bankr. S.D.N.Y. May 4, 2016); *Bray v. Shenandoah Fed. Savs. & Loan Ass'n (In re Snowshoe Co.)*, 789 F.2d 1085, 1088 (4th Cir. 1986) (holding that section 364 "imposes no duty to seek credit from every possible lender before concluding that such credit is unavailable.").

42. Moreover, in circumstances where only a few lenders likely can or will extend the necessary credit to a debtor, "it would be unrealistic and unnecessary to require [the debtor] to conduct such an exhaustive search for financing." *In re Sky Valley, Inc*., 100 B.R. 107, 113 (Bankr. N.D. Ga. 1988), *aff'd sub nom., Anchor Savs. Bank FSB v. Sky Valley, Inc*., 99 B.R. 117, 120 n.4 (N.D. Ga. 1989); *see also Ames Dep't Stores*, 115 B.R. at 40 (approving financing facility and holding that debtor made reasonable efforts to satisfy the standards of section 364(c) where it approached four lending institutions, was rejected by two, and selected most favorable of two offers it received); *see also In re Stanley Hotel, Inc*., 15 B.R. 660, 663 (D.

Colo. 1981) (bankruptcy court's finding that two national banks refused to grant unsecured loans was sufficient to support conclusion that section 364 requirement was met).

i. No Comparable Alternative to the DIP Facilities Is Reasonably Available

43. As further described in the Lewis Declaration and herein, the Debtors conducted an extensive marketing process and were unable to procure DIP financing on an unsecured basis in exchange for the grant of a superpriority administrative expense claim. Further, the Debtors were unable to obtain financing on a junior secured basis on more favorable economic terms or operating covenants than the KPS DIP Proposal. In addition, no party was willing to provide sufficient financing on a junior secured basis to fund the Chapter 11 Cases fully without the need for the DIP ABL Facility or the consent of the Prepetition Secured Parties for the use of Cash Collateral. In short, the Debtors were unable to obtain postpetition financing or other financial accommodations from any alternative prospective lender or group of lenders on more favorable terms and conditions than those for which approval is sought herein. *See* Lewis Decl. ¶ 36.

44. Having conducted an extensive marketing process and having determined that postpetition financing would only be available pursuant to senior liens under section 364(d) of the Bankruptcy Code, the Debtors negotiated with the DIP Lenders to secure the DIP Facilities on the terms described herein. The Prepetition Secured Parties would not consent to be primed by a third party facility, and neither the Debtors nor any of the potential financing sources were prepared to endure the risk and costs associated with a potential priming litigation. *See* Lewis Decl. ¶ 32.

45. Notably, notwithstanding the Debtors' lack of alternative financing options, the DIP Facilities are the product of extensive good faith negotiations between the

Debtors and the DIP Lenders, each of which was represented by experienced counsel and financial advisors. Through these negotiations, the Debtors were able to secure the best terms possible under the circumstances. Simply put, the DIP Facilities provide the Debtors with the liquidity they need on the best and only terms available to them. Based on the negotiation history of the DIP Facilities, and the marketing efforts undertaken by the Debtors and their advisors, the DIP Facilities represent the Debtors' best and only available postpetition financing option. *See* Lewis Decl. ¶¶ 32, 34, 40.

ii. DIP Facilities are Necessary to Preserve Value of the Estates

46. As debtors in possession, the Debtors have a fiduciary duty to protect and maximize their estates' assets. *See In re Mushroom Transp. Co*., 382 F.3d 325, 339 (3d Cir. 2004). As described in the Ficks Declaration, it is essential that the Debtors obtain the proposed DIP Facilities to continue the orderly day-to-day operation of their businesses, facilitate a sale process of substantially all of the Debtors' assets, and provide the necessary funds for the administration of these Chapter 11 Cases. Without access to the DIP Facilities, the Debtors would be unable to fund necessary expenditures—including employee payroll and vendor payments in the ordinary course of business—that are essential to the Debtors' operational viability and critical for the preservation of the value of the Debtors' businesses. Put simply, absent the postpetition financing provided by the DIP Facilities, the Debtors will have no choice but to cease and wind down their operations, resulting in irreparable harm to their businesses, going concern value and ability to pursue a sale process in an orderly basis. *See* Ficks Decl. ¶¶ 94-96. Accordingly, the circumstances of the Chapter 11 Cases necessitate postpetition financing under section 364(c) of the Bankruptcy Code.

iii. Terms of the DIP Facilities are Fair, Reasonable and Appropriate Under the Circumstances

47. In considering whether the terms of postpetition financing are fair and reasonable, courts consider the terms in light of the relative circumstances of both the debtor and the potential lender. *In re L.A. Dodgers LLC*, 457 B.R. 308, 312 (Bankr. D. Del. 2011) (stating that approval of a DIP financing transaction requires terms that are "fair, reasonable and adequate, given the circumstances of the debtor-borrower and the proposed lender"); *In re Farmland Indus., Inc*., 294 B.R. at 886; *see also Unsecured Creditors' Comm. Mobil Oil Corp. v. First Nat'l Bank & Trust Co. (In re Ellingsen MacLean Oil Co.)*, 65 B.R. 358, 365 (W.D. Mich. 1986) (a debtor may have to enter into hard bargains to acquire funds). The appropriateness of a proposed financing facility should also be considered in light of current market conditions. *See Transcript of Record at 740:4-6, In re Lyondell Chem. Co*., No. 09-10023 (REG) (Bankr S.D.N.Y. Feb. 27, 2009) ("[B]y reason of present market conditions, as disappointing as the [DIP] pricing terms are, I find the [DIP] provisions reasonable here and now.").

48. As noted above, after conducting a thorough marketing process, the Debtors entered into extensive negotiations with the DIP Secured Parties. The DIP Documents were negotiated extensively by the Debtors and the DIP Secured Parties, in good faith and at arm's length as required by section 364(e) of the Bankruptcy Code, with all parties represented by experienced counsel. The Debtors believe that the end result of such extensive marketing process and hard-fought negotiations—the DIP Facilities—is the best and only financing option under the circumstances. Given the urgent need of the Debtors to obtain postpetition financing to allow the continuation of the orderly day-to-day operation of their business and provide the necessary funds for the administration of these Chapter 11 Cases for the benefit of all parties in

interest, the Debtors submit that the terms of the DIP Facilities represent the most favorable terms available to the Debtors under current market conditions, and therefore are fair, appropriate, reasonable and in the best interests of the Debtors, their estates and their creditors. *See* Lewis Decl. ¶¶ 32, 36, 40.

B. Interests of Prepetition Secured Parties Are Adequately Protected

49. A debtor may obtain postpetition credit "secured by a senior or equal lien on property of the estate that is subject to a lien only if" the debtor, among other things, provides "adequate protection" to those parties whose liens are primed. *See* 11 U.S.C. § 364(d)(1)(B). What constitutes adequate protection is decided on a case-by-case basis, and adequate protection may be provided in various forms, including payment of adequate protection fees, payment of interest, or granting of replacement liens or administrative claims. Thus, what constitutes adequate protection is decided on a case-by-case basis. *See, e.g., In re Martin*, 761 F.2d 472, 474 (8th Cir. 1985) ("[S]uch matters 'are [to be] left to case-by-case interpretation and development.'") (quoting H.R. Rep. No. 595, 95th Cong., 2d Sess. 339, *reprinted* in 1978 U.S. Code Cong. & Ad. News 5963, 6295); *In re Mosello*, 195 B.R. 277, 289 (Bankr. S.D.N.Y. 1996) ("the determination of adequate protection is a fact-specific inquiry . . . left to the vagaries of each case"); *In re Realty Sw. Assocs*., 140 B.R. 360 (Bankr. S.D.N.Y. 1992); *In re Columbia Gas Sys., Inc.*, 1992 WL 79323, at *2 (Bankr. D. Del. Feb. 18, 1992); *In re Beker Indus. Corp*., 58 B.R. 725, 736 (Bankr. S.D.N.Y. 1986) (the application of adequate protection "is left to the vagaries of each case, but its focus is protection of the secured creditor from diminution in the value of its collateral during the reorganization process") (citation omitted); *see also In re Dynaco Corp*., 162 B.R. 389, 394 (Bankr. D.N.H. 1993) (citing 2 Collier Bankruptcy ¶ 361.01[1] at 361–66 (15th ed. 1993) (explaining that adequate protection can take many forms and "must

be determined based upon equitable considerations arising from the particular facts of each proceeding")).

50. The focus of the adequate protection requirement is to protect a secured creditor from the diminution in the value of its interest in the particular collateral during the period when such collateral is being used by the debtor in possession. *See In re Swedeland Dev. Group, Inc*., 16 F.3d 552, 564 (3d Cir. 1994) ("The whole purpose of adequate protection for a creditor is to insure that the creditor receives the value for which he bargained prebankruptcy.") (internal citations omitted); *In re Martin*, 761 F.2d at 474; *In re Johnson*, 90 B.R. 973, 978 (Bankr. D. Minn. 1988) (holding that secured creditor is not impaired and is not entitled to receive adequate protection payments where value of collateral does not decline); *495 Cent. Park*, 136 B.R. at 631 ("The goal of adequate protection is to safeguard the secured creditor from diminution in the value of its interest during the chapter 11 reorganization."); *In re Beker Indus. Corp*., 58 B.R. at 736; *In re Hubbard Power & Light*, 202 B.R. 680, 685 (Bankr. E.D.N.Y. 1996).

51. As noted above, the Prepetition Secured Parties will be granted the following adequate protection package, pursuant to entry of the Proposed DIP Orders: (a) use of Cash Collateral to repay the Prepetition ABL Obligations; (b) payment in cash of default-rate interest as and when due with respect to the obligations under the Prepetition ABL Agreement; (c) payment of reasonable and documented fees, costs and expenses (including reasonable legal and advisor fees and expenses) of the Prepetition ABL Agent under the Prepetition ABL Agreement; (d) replacement liens on the DIP Collateral that are subordinated to the DIP Liens, the Carve-Out, Permitted Liens (as defined in the DIP Credit Agreement) and any Prior Senior Liens (as defined in the Proposed Interim DIP Order); (e) superpriority administrative claims as

provided for in section 507(b) of the Bankruptcy Code that are subordinated to the Carve-Out, any Termination Payment, any Expense Reimbursement Payment, and the DIP Superpriority Claims , except as otherwise provided in the "waterfall" provisions in the DIP Credit Agreement; and (f) delivery of all reports and notices provided for in the DIP Documents, in each case when and as required under the DIP Documents.

52. Further, the Prepetition Secured Parties have consented to the aforementioned adequate protection package. The consent of the Prepetition Secured Parties permits the Debtors to avoid potentially time-consuming and unpredictable priming litigation and to save considerable resources, not to mention avoid a delay, in obtaining postpetition financing. Consent by a prepetition secured creditor to priming obviates the need to show adequate protection. *See Anchor Savs. Bank FSB v. Sky Valley, Inc*., 99 B.R. 117, 122 (N.D. Ga. 1989) ("[B]y tacitly consenting to the superpriority lien, those [undersecured] creditors relieved the debtor of having to demonstrate that they were adequately protected.").

53. Courts in this district and others have approved similar forms of adequate protection to the adequate protection package being provided to the Prepetition Secured Parties here. *See, e.g., In re Foresight Energy LP*, Case No. 20-41308-659 (KAS) (Bankr. E.D. Mo. Mar. 11, 2020 and Apr. 9, 2020); *In re Payless Holdings LLC*, Case No. 19-40883-659 (KAS) (Bankr. E.D. Mo. Feb. 25, 2019 and Apr. 4, 2019); *In re Payless Holdings LLC*, Case No. 17-42267-659 (KAS) (Bankr. E.D. Mo. Apr. 5, 2017 and May 17, 2017); *In re Peabody Energy Corp*., Case No. 16-42529-399 (BSS) (Bankr. E.D. Mo. Apr. 14, 2016 and May 18, 2016).

54. The adequate protection package provided to the Prepetition Secured Parties, as described above, appropriately safeguards the Prepetition Secured Parties from the diminution in the value of their interests in the prepetition collateral, if any. Accordingly, the

Court should find that the adequate protection provided to the Prepetition Secured Parties is fair and reasonable, and satisfies the requirements of section 364(d)(1)(B) of the Bankruptcy Code.

C. Debtors Should Be Authorized to Pay the Fees Required By the DIP Lenders in Connection with the DIP Facilities

55. Under the DIP Documents, the Debtors have agreed, subject to Court approval, to pay certain fees to the DIP Agent and the DIP Lenders in exchange for their providing the DIP Facilities (the "**DIP Fees**").

56. As set forth in the Lewis Declaration, the DIP Fees are an integral component of the overall terms of the DIP Facilities, and were required by the DIP Agent and the DIP Lenders as consideration for the extension of postpetition financing. The Debtors considered the DIP Fees, together with the other provisions of the DIP Documents, when determining in the exercise of their sound business judgment that the DIP Documents constituted the best terms on which the Debtors could obtain sufficient postpetition financing. The Debtors determined that the terms of the DIP Documents, including the DIP Fees imposed thereunder, are fair and reasonable under the circumstances, are within the market for comparable debtor-in-possession financing, and were negotiated at arm's length. *See* Lewis Decl. ¶¶ 35-36. Accordingly, the Debtors believe paying the DIP Fees in order to obtain the DIP Facilities is in the best interests of the Debtors' estates, and submit that the Court should authorize the Debtors to pay the DIP Fees.

D. Proposed Roll-Up of Prepetition ABL Loans Should Be Approved

57. The DIP Facilities include a partial repayment or "roll-up" on a "creeping" basis during the Interim Period (as defined below) and, upon entry of the Proposed Final DIP Order, the full repayment or "roll-up" of the Prepetition ABL Obligations with the proceeds of the DIP Term Loan Facility, which are necessary components of the DIP Facilities. Specifically,

pursuant to the Proposed Interim DIP Order, during the interim period between the entry of the Proposed Interim DIP Order and the Proposed Final DIP Order (the "**Interim Period**"), the Debtors will use all cash, collections, and proceeds of the Prepetition Collateral to repay the Prepetition ABL Obligations, and revolving loans made available under the DIP ABL Facility to fund the Debtors' necessary disbursements during the Interim Period. Further, upon entry of the Proposed Final DIP Order, proceeds of the DIP Term Loan Facility will, *first*, immediately be used to repay in full in cash all then outstanding Prepetition Obligations (as defined in the Proposed Final DIP Order) and, *second*, be used to fund the operating and other administrative expenses in these Chapter 11 Cases in accordance with the DIP Budget Covenant (as defined in the Proposed Final DIP Order). The repayment of the Prepetition ABL Obligations in accordance with the proposed Interim Order and the DIP Credit Agreement is a necessary condition of the Prepetition Secured Parties' consent to the use of Prepetition ABL Collateral, and to the subordination of the Prepetition Agent's liens to the DIP Superpriority Claims, Carve-Out, and Termination Payment and Expense Reimbursement Payment, as provided in the Interim Order.

58. Courts consider a number of factors when determining whether to authorize a roll-up of prepetition debt, including whether: (i) the proposed financing is an exercise of sound and reasonable business judgment; (ii) no alternative financing is available on any other basis; (iii) the financing is in the best interests of the estate and its creditors; (iv) no better offers, bids, or timely proposals are before the court; (v) the credit transaction is necessary to preserve the assets of the estate; (vi) the terms of the transaction are fair, reasonable, and adequate, given the circumstances of the debtor and proposed lender(s); (vii) the financing is necessary, essential, and appropriate for the continued operating of the Debtors' business and the

preservation of their estates; and (viii) the financing agreement was negotiated in good faith and at arms' length between the debtor and the proposed lenders. *See In re Farmland Indus., Inc.*, 294 B.R. 855, 879-80 (surveying opinions authorizing roll-ups).

59. After careful consideration of the terms of the DIP Facilities, the Debtors determined that the Roll-Up is appropriate and necessary under the circumstances for the following reasons:

a) The Roll-Up of the Prepetition Facility is a material component of the structure of the DIP Facility required by the DIP ABL Lenders as a condition to their commitment to provide postpetition financing. Without the additional protections and compensation offered by the Roll-Up, the DIP ABL Lenders would be unwilling to finance the DIP Facilities. *See* Lewis Decl. ¶ 33.

b) As discussed above, the Debtors conducted an extensive marketing process and were unable to obtain postpetition financing on better or similar terms that did not provide for repayment of prepetition obligations. *Id*. ¶ 33.

c) Based on a review of the advance rates in BSC's most recent Borrowing Base Certificate, the aggregate value of the Prepetition ABL Collateral securing the Prepetition ABL Obligations exceeds the aggregate amount of the Prepetition ABL Obligations owed by the Debtors in these Chapter 11 Cases. *Id*. ¶ 33. In other words, the Prepetition ABL Lenders are oversecured. Repaying an oversecured prepetition creditor that stands to receive payment in full with postpetition loans will not harm the Debtors' estates and other creditors—under such circumstances, the roll-up of the Prepetition ABL Obligations merely affects the timing, not the amount or certainty, of the Prepetition ABL Lenders' recovery. Additionally, because the Prepetition ABL Lenders are oversecured, the roll-up is otherwise a net neutral for the Debtors' estates as the Debtors would be required to adequately protect the Prepetition ABL Lenders' interests in the Prepetition ABL Collateral during the Chapter 11 Cases.

d) Refinancing the Prepetition ABL Obligations into the DIP ABL Facilities will allow the Debtors to continue to make critical investments in their business at

a postpetition interest rate that is significantly lower than the prepetition interest rate, including default interest.[10] *Id*. ¶ 33.

e) Under the DIP Credit Agreement, the Prepetition Secured Parties have agreed to forbear from exercising their default-related rights and remedies under the Prepetition ABL Documents against the Non-Debtor Foreign DIP Guarantors or their assets. Such forbearance is of substantial value to the Non-Debtor Foreign DIP Guarantors and to the Company as a whole. Without it, the Company could be forced to file for insolvency proceedings in numerous countries and jurisdictions and devote time and resources that would undoubtedly disrupt and potentially derail its restructuring efforts and negatively impact the value of its global business.

f) Pursuant to the Proposed DIP Orders, the Roll-Up is subject to the potential Challenges (as defined in the Proposed DIP Orders) to be raised by a creditors' committee (if appointed in these Chapter 11 Cases) or another party-in-interest with requisite standing, if a committee is not appointed. Specifically, pursuant to the Proposed DIP Orders, in the event that (a) there is a timely successful challenge to the repayment of the Prepetition ABL Obligations based upon a successful challenge to the validity, enforceability, extent, perfection, or priority of the Prepetition ABL Obligations or the liens securing the same, and (b) such challenge has been deemed successful and approved by a final non-appealable order, then the Court shall have the power to unwind or otherwise modify such repayment of Prepetition ABL Obligations made before entry of such final non-appealable order, which might include the disgorgement or reallocation of interest, fees, principal, or other incremental consideration paid in respect of the Prepetition ABL Obligations or the avoidance of liens and/or guarantees with respect to the Debtors, as the Court shall determine after notice and a hearing.

g) Finally, the Roll-Up is part and parcel of, and a condition of, the DIP Facilities which will ensure the Debtors' access to sufficient liquidity for working capital and general corporate purposes to fund day-to-day operations and sustain their going concern value during these Chapter 11 Cases. The DIP Facilities, including the Roll-Up, are the Debtors' best and only postpetition financing option. Without continued access to a postpetition asset-based

[10] The applicable interest rate for the DIP ABL Loans is 5.25% lower than the applicable interest rate payable on the Prepetition ABL Obligations projected to be repaid in these Chapter 11 Cases, and the applicable interest rate for the DIP Term Loans is 1.75% lower than the applicable interest rate payable on the Prepetition ABL Obligations projected to be repaid by proceeds of DIP Term Loans.

> lending facility to fund the administration of these Chapter 11 Cases, including a sale of substantially all of the Debtors' assets followed by an orderly wind down of the Debtors' businesses, the Debtors' businesses would cease to operate as a going concern and would likely be forced to liquidate immediately. *Id.* ¶ 34.

60. The repayment or exchange of prepetition debt for postpetition debt (often referred to as a "roll-up") is a common feature in debtor in possession financing arrangements. Courts in this district and others have approved similar roll up features in debtor in possession financing on both an interim and final basis. *See, e.g., In re Bruin E&P Partners,* LLC, No. 20-33605 (MI) (Bankr. S.D. Tex. July 17, 2020) (authorizing a full roll up of prepetition loans in an amount of $50 million pursuant to interim order with an additional roll up in an amount of $65 million subject to entry of final order);; *In GNC Holdings, Inc.*, No. 20-1162 (KBO) (Bankr. D. Del. June 26, 2020) (authorizing a full roll up of a prepetition ABL FILO facility of $275 million pursuant to interim order); *In re Foresight Energy LP*, Case No. 20-41308 (Bankr. E.D. Mo. Mar. 11, 2020 and Apr. 9, 2020) (authorizing DIP Financing in an amount of $175 million, including a roll up of prepetition debt of approximately $75 million pursuant to interim and final orders); *In re Forever 21, Inc*., No. 19-12122 (KG) (Bankr. D. Del. Oct. 2, 2019) (authorizing a "creeping" roll up of a prepetition ABL FILO facility of $60 million pursuant to interim order and a final roll up of all remaining amounts pursuant to final order); *In re Blackhawk Mining LLC*, No. 19-11595 (LSS) (Bankr. D. Del. Aug. 13, 2019) (authorizing an approximately $240 million DIP that included a roll-up of $70 million in prepetition term loan debt and up to $82 million in prepetition ABL debt pursuant to interim order); *In re Charming Charlie LLC*, No. 19-11534 (CSS) (Bankr. D. Del. July 12, 2019) (authorizing a "creeping" roll up of a prepetition ABL FILO facility of $9.5 million pursuant to interim order and a final roll up of remaining amounts pursuant to final order); *In re Sanchez Energy Corp*., No. 19-34508 (MI) (Bankr. S.D.

Tex. Aug. 15, 2019) (authorizing approximately $350 million in DIP financing that included repayment of approximately $175 million of prepetition debt, pursuant to interim order); *In re Legacy Reserves Inc*., No. 19-33395 (MI) (Bankr. S.D. Tex. June 20, 2019) (authorizing approximately $350 million in DIP financing that included repayment of approximately $87.5 million of prepetition debt, pursuant to interim order); *In re Vanguard Natural Res., Inc*., No. 19-31786 (DRJ) (Bankr. S.D. Tex. April 3, 2019) (authorizing approximately $130 million in DIP financing that included repayment of approximately $65 million in prepetition debt, pursuant to interim order); *In re Westmoreland Coal Co*., No. 18-35672 (MI) (Bankr. S.D. Tex. Oct. 10, 2018) (authorizing approximately $110 million of DIP financing that included repayment of $90 million in prepetition debt, pursuant to interim order); *In re ATD Corp*., Case No. 18-12221 (KJC) (Bankr. D. Del. Oct. 5, 2018) (authorizing approximately $840 million of DIP financing that included a full roll up of approximately $640 million in prepetition ABL loans, pursuant to interim order); *In re Bon-Ton Stores, Inc*., No. 18-10248 (MFW) (Bankr. D. Del. Feb. 6, 2018) (authorizing full roll-up of all $489 million outstanding prepetition revolving obligations pursuant to interim order); *In re Real Indus. Inc*., No. 17-12464 (KJC) (Bankr. D. Del. Nov. 20, 2017) (authorizing approximately $365 million in DIP financing that included a "creeping" roll-up, pursuant to an interim order, and a full roll-up, pursuant to final order, of approximately $266 million prepetition debt); *In re American Apparel, Inc*., No. 15-12055 (Bankr. D. Del. Oct. 6, 2017) (approving full roll up of all outstanding amounts under the prepetition revolving credit agreement pursuant to interim order); *In re Halcon Resources Corp*., Case No. 16-11724 (BLS) (Bankr. D. Del. July 29, 2016) (authorizing full roll up of prepetition revolving credit loans of approximately $450 million pursuant to interim order); *In re Payless Holdings LLC*, Case No. 17-42267 (KAS) (Bankr. E.D. Mo. Apr. 5, 2017 and May 17, 2017) (authorizing $305 million

ABL DIP financing to pay, inter alia, all pre-petition revolver obligations outstanding in excess of $186 million pursuant to interim and final orders); *In re Noranda Aluminum, Inc*., Case No. 16-10083 (BSS) (Bankr. E.D. Mo. Feb. 9, 2016 and Mar. 11, 2016) (authorizing ABL DIP Facility of $130 million, which included payment full payment of all Pre-Petition ABL Debt pursuant to interim and final orders); *In re Bakers Footwear Group, Inc*., Case No. 12-49658 (CER) (Bankr. E.D. Mo. Oct. 5, 2012 and Nov. 5, 2012) (authorizing DIP Financing of $22 million, which included a roll up of prepetition loans of approximately $17 million pursuant to interim and final orders).

61. Here, the proposed Roll-Up is justified under the circumstances. Accordingly, the Debtors respectfully submit that the Court should approve the Debtors' entry into the DIP Facilities, including the proposed Roll-Up, as a sound exercise of the Debtors' business judgment.

E. Carve-Out Is Appropriate

62. The liens granted pursuant to the DIP Facility, replacement liens, adequate protection claims, and the superpriority claims of all secured lenders are subject and subordinate to the Carve-Out. The Carve-Out contains similar terms to other carve-out arrangements that have been found to be reasonable and necessary to ensure that a debtor's estate and any statutory committee can retain assistance from counsel.

63. Without the Carve-Out, the Debtors' estates may be deprived of possible rights and powers because the services for which professionals may be paid in these cases is restricted. *See In re Ames Dep't Stores*, 115 B.R. at 38 (observing that courts insist on carve outs for professionals representing parties in interest because "[a]bsent such protection, the collective rights and expectations of all parties-in-interest are sorely prejudiced"). Additionally, the Carve-Out protects against administrative insolvency during the course of these cases by ensuring that

assets remain for the payment of U.S. Trustee fees and professional fees of the Debtors and any statutory committee appointed in these Chapter 11 Cases, notwithstanding the grant of superpriority and administrative liens and claims under the DIP Facilities.

64. Courts in this district and others routinely approve carve-outs agreed to by the debtors and their DIP lenders. *See, e.g., In re GNC Holdings, Inc.,* Case No. 20-11662 (KBO) (Bankr. D. Del. June 26, 2020); *In re Foresight Energy LP*, Case No. 20-41308 (KSS) (Bankr. E.D. Mo. Mar. 11, 2020); *In re Forever 21, Inc.*, Case No. 19-12122 (KG) (Bankr. D. Del. Oct. 2, 2019); *In re Fusion Connect, Inc.*, Case No. 19-11811 (SMB) (Bankr. S.D.N.Y. June 6, 2019); *In re Waypoint Leasing Holdings LTD.*, Case No. 18-13648 (SMB) (Bankr. S.D.N.Y. Dec. 12, 2018); *In re Bon-Ton Stores, Inc.*, Case No. 18-10248 (MFW) (Bankr. D. Del. Feb. 4, 2018); *In re Payless Holdings LLC*, No. 17-42267-659 (KSS) (Bankr. E.D. Mo. May 17, 2017); *In re Halcón Res. Corp.*, No. 16-11724 (BLS) (Bankr. D. Del. Aug. 19, 2016); *In re Aéropostale*, Inc., No. 16-11275 (SHL) (Bankr. S.D.N.Y. May 6, 2016); *In re Peabody Energy Corp.*, No. 16-42529-399 (BSS) (Bankr. E.D. Mo. May 18, 2016); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. March 11, 2016); *In re Arch Coal, Inc.*, No. 16-40120 (Bankr. E.D. Mo. Jan. 15, 2016).

F. DIP Lenders Should Be Deemed Good Faith Lenders

65. Section 364(e) of the Bankruptcy Code protects a good-faith lender's right to collect on loans extended to a debtor, and its right in any lien securing those loans, even if the authority of the debtor to obtain such loans or grant such liens is later reversed or modified on appeal. Section 364(e) of the Bankruptcy Code provides that:

> The reversal or modification on appeal of an authorization under this section [364 of the Bankruptcy Code] to obtain credit or incur debt, or of a grant under this section of a priority or a lien, does not affect the validity of any debt so incurred, or any priority or lien so granted, to an entity that extended such credit in good faith, whether or not such entity

> knew of the pendency of the appeal, unless such authorization and the incurring of such debt, or the granting of such priority or lien, were stayed pending appeal.

66. Here, the Debtors believe the DIP Facilities embody the most favorable terms on which the Debtors could obtain postpetition financing. As described in the Lewis Declaration, all negotiations of the DIP Documents with the DIP Lenders were conducted in good faith and at arms' length. The terms and conditions of the DIP Documents are fair and reasonable, and the proceeds of the DIP Facilities will be used only for purposes that are permissible under the Bankruptcy Code, in accordance with the DIP Documents and the Proposed DIP Orders. Further, no consideration is being provided to any party to the DIP Documents other than as described herein. Accordingly, the Court should find that the DIP Lenders are "good faith" lenders within the meaning of section 364(e) of the Bankruptcy Code and are entitled to all of the protections afforded by that section.

G. Section 506(c) and "Equities of the Case" Waivers are Appropriate

67. In connection with consenting to priming liens or the use of cash collateral, prepetition secured parties commonly request a waiver of (a) section 506(c) of the Bankruptcy Code, which permits the Debtors to surcharge collateral and (b) the "equities of the case" exception from the general rule of section 552 of the Bankruptcy Code that prepetition liens that attach to proceeds of collateral will continue to attach to postpetition proceeds. Here, subject to entry of the Proposed Final DIP Order, the Prepetition Secured Parties are consenting to have their liens primed by the DIP Liens, thereby providing the Debtors with sufficient funds with which to continue their business operations. Absent such consent, the Debtors would be forced to seek non-consensual use of Cash Collateral and priming of the Prepetition Secured Parties' liens, which would require costly litigation, the outcome of which would be highly uncertain, with devastating consequences if the Debtors did not prevail.

68. As a condition to providing consent, the Prepetition Secured Parties require the Debtors to waive their rights under section 506(c) and the "equities of the case" exception under section 552(b) of the Bankruptcy Code, subject to and effective upon entry of the Proposed Final DIP Order. In addition, as the section 506(c) and "equities of the case" waivers would only be approved pursuant to the Proposed Final DIP Order, parties in interest (including any statutory committee that may be appointed) will have an opportunity to be heard in connection with the approval of such waiver. Accordingly, the Debtors submit that the proposed section 506(c) and "equities of the case" waivers are appropriate.

H. Modification of Automatic Stay Is Warranted

69. The Proposed Interim DIP Order provides that the automatic stay provisions of section 362 of the Bankruptcy Code will be modified to allow the DIP Lenders to file any financing statements, security agreements, notices of liens, and other similar instruments and documents in order to validate and perfect the liens and security interests granted to them under the Proposed Interim DIP Order. The Proposed Interim DIP Order further provides that the automatic stay is modified as necessary to permit the Debtors to grant liens to the DIP Lenders and to incur all liabilities and obligations set forth in the DIP Documents and the Proposed Interim DIP Order. Finally, the Proposed Interim DIP Order provides that, following the occurrence of an Event of Default (as defined in the DIP Documents) and certain notice procedures set forth in the Proposed Interim DIP Order, the automatic stay shall be vacated and modified to the extent necessary to permit the DIP Agents to exercise all rights and remedies in accordance with the DIP Documents or applicable law.

70. Stay modifications of this kind are ordinary and standard features of debtor-in-possession financing arrangements and, in the Debtors' business judgment, are reasonable and fair under the circumstances of these chapter 11 cases. *See, e.g.*, *In re GNC*

Holdings, Inc., No. 20-11662 (Bankr. D. Del. June 26, 2020); *In re Waypoint Leasing Holdings LTD.*, Case No. 18-13648 (SMB) (Bankr. S.D.N.Y. Dec. 12, 2018); *In re Sears Holdings Corp.*, Case No. 18-23538 (RDD) (Bankr. S.D.N.Y. Oct. 16, 2018); *In re Tops Holding II Corp.*, Case No. 18-22279 (RDD) (Bankr S.D.N.Y. Apr. 5, 2018); *In re Claire's Stores, Inc.*, No. 18-10584 (MFW) (Bankr. D. Del. Mar. 20, 2018); *In re Charming Charlie, LLC*, No. 17-12906 (CSS) (Bankr. D. Del. Dec. 13, 2017); *In re Payless Holdings LLC*, No. 17-42267 (KSS) (Bankr. E.D. Mo. Apr. 5, 2017); *In re Noranda Aluminum, Inc.*, No. 16-10083 (BSS) (Bankr. E.D. Mo. Feb. 9, 2016); *In re Arch Coal, Inc.*, No. 16-40120 (CER) (Bankr. E.D. Mo. Jan. 15, 2016); *In re Bakers Footwear Grp.*, Inc., No. 12-49658-705 (CER) (Bankr. E.D. Mo. Nov. 5, 2012); *In re Trilogy Dev. Co.*, 2009 Bankr. LEXIS 5178, at *19 (Bankr. W.D. Mo. July 14, 2009).

I. Debtors Require Immediate Approval of DIP Facilities

71. Bankruptcy Rules 4001(b) and 4001(c) provide that a final hearing on a motion to obtain credit pursuant to section 364 of the Bankruptcy Code or to use cash collateral pursuant to section 363 of the Bankruptcy Code may not be commenced earlier than fourteen (14) days after the service of such motion. Upon request, however, the Court may grant interim relief in respect to a motion filed pursuant to section 363 or 364 of the Bankruptcy Code if, as here, interim relief is "necessary to avoid immediate and irreparable harm to the estate pending a final hearing." Fed. R. Bankr. P. 4001(b)(2), (c)(2). In examining requests for interim relief under this rule, courts generally apply the same business judgment standard applicable to other business decisions. *See, e.g., In re Ames Dep't Stores, Inc.*, 115 B.R. 34, 36 (Bankr. S.D.N.Y. 1990).

72. The Debtors and their estates will suffer immediate and irreparable harm to the detriment of all creditors and other parties in interest if the interim relief requested herein is not granted promptly after the Petition Date. For the reasons noted above and in the Ficks

Declaration, the Debtors have an immediate need for additional liquidity and continued access to Cash Collateral, without which it will be impossible for the Debtors to administer these chapter 11 cases and continue operating in the ordinary course, which would damage the value of the Debtors' businesses and their assets. The Debtors' immediate need for additional liquidity will, among other things, fund the administration of these chapter 11 cases, fund the continued operation of their businesses during these chapter 11 cases, and pay prepetition amounts owed under the ABL Credit Facility. In short, immediate access to the DIP Facilities is vital to preserve and maximize the value of the Debtors' estates during these chapter 11 cases. Furthermore, approval of the DIP Facilities will not only provide essential funding, but will also assist the Debtors to instill confidence in their customer base, employees, contract counterparties, and business partners and help assure those critical stakeholders that the Debtors will continue operating "business as usual" and otherwise pay their obligations as they come due after the Petition Date. Absent the ability to access the DIP Facility, even for a limited period of time, there is a substantial risk that the Debtors will be unable to continue operating their businesses and will instead be forced to liquidate, resulting in a significant deterioration in the value of the Debtors' businesses to the detriment of all stakeholders. *See* Ficks Decl. ¶¶ 94-96.

73. Therefore, the Debtors request that the Court hold and conduct a hearing to consider entry of the Interim DIP Order authorizing the Debtors, from and after entry of the Interim DIP Order until the Final Hearing, to receive initial funding under the DIP Facilities and access to Cash Collateral. The Debtors' believe that this relief will enable the Debtors to preserve and maximize value and, therefore, avoid immediate and irreparable harm and prejudice to their estates and all parties in interest, pending the Final Hearing.

Request for Final Hearing

74. Pursuant to Bankruptcy Rules 4001(b)(2) and 4001(c)(2), the Debtors request that the Court set a date for the Final Hearing that is as soon as practicable and fix the time and date prior to the Final Hearing for parties to file objections to this Motion.

Compliance with Bankruptcy Rule 6004(a) and Waiver of Bankruptcy Rule 6004(h)

75. To implement the foregoing successfully, the Debtors request that the Court find that notice of the Motion satisfies Bankruptcy Rule 6004(a) and that the Court waive the 14-day period under Bankruptcy Rule 6004(h).

Reservation of Rights

76. Except to the extent contemplated in the Proposed DIP Orders, nothing contained herein is intended to be or shall be deemed as (i) an admission as to the validity of any claim against the Debtors, (ii) a waiver or limitation of the Debtors' or any party in interest's rights to dispute the amount of, basis for, or validity of any claim, (iii) a waiver of the Debtors' rights under the Bankruptcy Code or any other applicable nonbankruptcy law, (iv) an agreement or obligation to pay any claims, (v) a waiver of any claims or causes of action which may exist against any creditor or interest holder, (vi) an admission as to the validity of any liens satisfied pursuant to this Motion, or (vii) an approval, assumption, adoption, or rejection of any agreement, contract, lease, program, or policy under section 365 of the Bankruptcy Code. Likewise, if the Court grants the relief sought herein, any payment made pursuant to the Court's order is not intended to be and should not be construed as an admission to the validity of any claim or a waiver of the Debtors' rights to dispute such claim subsequently.

Notice

77. Notice of this Motion will be provided to (i) the Office of the United States Trustee for the Eastern District of Missouri; (ii) the holders of the 30 largest unsecured claims against the Debtors on a consolidated basis; (iii) Latham & Watkins LLP (Attn: Peter P. Knight, Esq. and Jonathan C. Gordon, Esq.), as counsel to JPMorgan Chase Bank, N.A., as the administrative agent and collateral agent under the ABL Credit Facility and DIP Facility; (iv) Pryor Cashman LLP (Attn: Seth H. Lieberman, Esq. and David W. Smith, Esq.), as counsel to Wilmington Trust, N.A., as successor indenture trustee under the Unsecured Notes; (v) the Internal Revenue Service; (vi) the United States Attorney's Office for the Eastern District of Missouri; (vii) the Securities and Exchange Commission; (viii) the Banks; (ix) all known parties, after reasonable inquiry, with recorded liens on any of the DIP Collateral; (x) any other party that has requested notice pursuant to Bankruptcy Rule 2002 (collectively, the "**Notice Parties**"). Notice of this Motion and any order entered hereon will be served in accordance with Local Rule 9013-3(A)(1).

No Previous Request

78. No previous request for the relief sought herein has been made by the Debtors to this or any other court.

WHEREFORE the Debtors respectfully request entry of the Proposed DIP Orders granting the relief requested herein and such other and further relief as the Court may deem just and appropriate.

Dated: July 20, 2020
St. Louis, Missouri

Respectfully submitted,

CARMODY MACDONALD P.C.

/s/ Robert E. Eggmann

Robert E. Eggmann, #37374MO
Christopher J. Lawhorn, #45713MO
Thomas H. Riske, #61838MO
120 S. Central Avenue, Suite 1800
St. Louis, Missouri 63105
Telephone: (314) 854-8600
Facsimile: (314) 854-8660
Email: ree@carmodymacdonald.com
cjl@carmodymacdonald.com
thr@carmodymacdonald.com

Proposed Local Counsel to the Debtors and Debtors in Possession

-and-

WEIL, GOTSHAL & MANGES LLP
Ronit J. Berkovich (*pro hac vice* pending)
Debora A. Hoehne (*pro hac vice* pending)
Martha E. Martir (*pro hac vice* pending)
767 Fifth Avenue
New York, New York 10153
Telephone: (212) 310-8000
Facsimile: (212) 310-8007
Email: Ronit.Berkovich@weil.com
Debora.Hoehne@weil.com
Martha.Martir@weil.com

Proposed Counsel to the Debtors and Debtors in Possession

Exhibit A
DIP Credit Agreement

J.P.Morgan

SENIOR SECURED DEBTOR-IN-POSSESSION
REVOLVING AND TERM CREDIT AGREEMENT

among

BRIGGS & STRATTON CORPORATION, as Lead Borrower,
the Subsidiary Borrowers from time to time party hereto,
as Borrowers,

VARIOUS LENDERS AND ISSUING BANKS,

JPMORGAN CHASE BANK, N.A.,
as the Administrative Agent, the Collateral Agent and the Swingline Lender

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Dated as of July [__], 2020

JPMORGAN CHASE BANK, N.A.,
BANK OF AMERICA, N.A.,
BANK OF MONTREAL,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Joint Lead Arrangers and Bookrunners

BANK OF AMERICA, N.A.,
BANK OF MONTREAL,
WELLS FARGO BANK, NATIONAL ASSOCIATION,
as Co-Syndication Agents

and

U.S. BANK NATIONAL ASSOCIATION,
as Documentation Agent

ASSET BASED LENDING

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THIS SENIOR SECURED DEBTOR-IN-POSSESSION REVOLVING AND TERM CREDIT AGREEMENT, dated as of [__], 2020 among BRIGGS & STRATTON CORPORATION, a Wisconsin corporation as debtor and debtor-in-possession (the "Lead Borrower"), each of the other U.S. Borrowers (as hereinafter defined) as debtors and debtors-in-possession party hereto from time to time, each of the other Borrowers (as hereinafter defined) party hereto from time to time, the Revolving Lenders (as hereinafter defined) party hereto from time to time, the DIP Term Lenders (as hereinafter defined) party hereto from time to time, the Issuing Banks (as hereinafter defined) party hereto from time to time and JPMORGAN CHASE BANK, N.A. ("JPMCB"), as the Administrative Agent, the Collateral Agent, the Australian Security Trustee and the Swingline Lender. All capitalized terms used herein and defined in Section 1.01 are used herein as therein defined.

W I T N E S S E T H:

WHEREAS, on July [__], 2020 (the "Petition Date"), each of the Debtors filed voluntary petitions in the United States Bankruptcy Court for the Eastern District of Missouri (the "Bankruptcy Court") for relief, and commenced jointly administered cases (the "Chapter 11 Cases") under chapter 11 of the U.S. Bankruptcy Code (11 U.S.C. §§ 101 et seq.; the "Bankruptcy Code") and have continued in the possession of their assets and in the management of their businesses pursuant to sections 1107 and 1108 of the Bankruptcy Code.

WHEREAS, in connection with the Chapter 11 Cases, the Borrowers have requested that the Revolving Lenders provide them with a senior secured priming first-out debtor-in-possession asset-based revolving credit facility, and the Swiss Borrower has requested that the Revolving Lenders provide it with continuing availability under a senior secured asset-based revolving credit facility on similar terms as provided in the Prepetition Credit Agreement (as defined below) subject to the changes agreed to herein, all in the form of Loans and Letters of Credit, at any time and from time to time prior to the Maturity Date, in an aggregate principal amount at any time outstanding not in excess of, on and after the DIP Closing Date and prior to the DIP Term Loan Closing Date, $412.5 million and, on and after the DIP Term Loan Closing Date, $350.0 million.

WHEREAS, the Lead Borrower has also requested that the DIP Term Lenders provide it with a senior secured priming last-out term credit facility in an aggregate principal amount not to exceed $265.0 million.

WHEREAS, the Borrowers are parties to that certain Revolving Credit Agreement dated as of September 27, 2019, as amended, restated, supplemented and/or otherwise modified from time to time prior to the Petition Date, among the Lead Borrower, the Borrowers, the lenders party thereto (the "Prepetition Lenders") and JPMorgan Chase Bank, N.A., as administrative agent (as so amended, restated, supplemented and/or otherwise modified from time to time, the "Prepetition Credit Agreement").

NOW, THEREFORE, the Lenders are willing to extend such credit to the Borrowers, the Swingline Lender is willing to make Swingline Loans to the Borrowers and the Issuing Banks are willing to issue Letters of Credit on the terms and subject to the conditions set forth herein and in the DIP Orders.

ARTICLE 1 DEFINITIONS AND ACCOUNTING TERMS

Section 1.01 Defined Terms. As used in this Agreement, the following terms shall have the following meanings:

"Account Debtor" shall mean any Person who may become obligated to another Person under, with respect to, or on account of, an Account.

"Account Party" shall have the meaning assigned to such term in Section 2.13(a).

"Accounts" shall mean all "accounts," as such term is defined in the UCC as in effect on the date hereof in the State of New York or, if applicable, in the Canadian PPSA or the Australian PPSA, in which any Person now or hereafter has rights and shall include all rights to payment for goods sold or leased, or for services rendered.

"Acquisition" shall mean any transaction or series of related transactions (unless solely among the Lead Borrower and/or one or more of its Subsidiaries) for the purpose of or resulting, directly or indirectly, in (a) the acquisition of all or substantially all of the assets of a Person, or of any business or division of a Person, (b) the acquisition of in excess of 50% of the Equity Interests of any Person, or otherwise causing any Person to become a Subsidiary or (c) a merger or consolidation or any other combination with another Person.

"Additional Mortgage" shall have the meaning assigned to such term in Section 9.10(c).

"Additional Security Documents" shall mean each document relating to Collateral that is entered into pursuant to any Initial Security Agreement or Section 9.10.

"Adjustment Date" shall mean the first day of January, April, July and October of each fiscal year.

"Administrative Agent" shall mean JPMCB, in its capacity as the Administrative Agent for the Lenders hereunder, and shall include its branch offices and affiliates in any applicable jurisdiction and any successor to the Administrative Agent appointed pursuant to Section 12.10.

"Administrative Agent Fees" shall have the meaning assigned to such term in Section 2.05(b).

"Administrative Questionnaire" shall mean an administrative questionnaire in the form supplied by the Administrative Agent.

"Affected Financial Institution" means (a) any EEA Financial Institution or (b) any UK Financial Institution.

"Affiliate" shall mean, when used with respect to a specified person, another person that directly, or indirectly through one or more intermediaries, Controls or is Controlled by or is under common Control with the person specified; provided, however, that neither the Administrative Agent nor any Lender (nor any Affiliate thereof) shall be considered an Affiliate of the Lead Borrower or any subsidiary thereof as a result of this Agreement, the extensions of credit hereunder or its actions in connection therewith; provided further that no individual shall be deemed to be an Affiliate of a Person solely because such individual is a director (or the equivalent thereof) or senior officer of such Person.

"Agents" shall mean the Administrative Agent, the Collateral Agent, any sub-agent or co-agent of either of the foregoing pursuant to the Loan Documents, the Lead Arrangers and the Documentation Agent.

"Aggregate Availability" shall mean, as of any applicable date, the amount by which the Line Cap at such time exceeds the Aggregate Exposures on such date.

"Aggregate Borrowing Base" shall mean the sum of all of the Borrowing Bases.

The Aggregate Borrowing Base or any component thereof at any time shall be determined by reference to the most recent Borrowing Base Certificate delivered to the Administrative Agent pursuant to Section 6.01(o) or Section 9.18(a), as applicable.

The Administrative Agent shall (i) promptly notify the Lead Borrower in writing (including via e-mail) whenever it determines that a Borrowing Base as of any specified date set forth on a Borrowing Base Certificate differs from such Borrowing Base as determined by the Administrative Agent for such date, (ii) discuss at such time the basis for any such deviation and any changes proposed by the Lead Borrower, including the reasons for any impositions of or changes in Reserves (in the Administrative Agent's Permitted Discretion and subject to the definition thereof) or eligibility criteria, with the Lead Borrower, (iii) consider at such time, in the exercise of its Permitted Discretion, any additional factual information provided by the Lead Borrower relating to the determination of such Borrowing Base and (iv) promptly notify the Lead Borrower of its decision with respect to any changes proposed by the Lead Borrower. Pending a decision by the Administrative Agent to make any requested change, the initial determination of such Borrowing Base by the Administrative Agent shall continue to constitute such Borrowing Base.

"Aggregate Exposures" shall mean, at any time, the sum of (a) the aggregate Outstanding Amount of all Revolving Loans plus (b) the LC Exposure, each determined at such time.

"Aggregate First Out Obligation Cap" shall mean (a) prior to the occurrence of the DIP Term Loan Closing Date, $390,000,000 and (b) on and after the occurrence of the DIP Term Loan Closing Date, $320,000,000, in each case of clauses (a) and (b), unless such amount authorized to be increased in writing by the Required DIP Term Lenders.

"Aggregate First Out Obligations" shall mean, at any time, the sum of (a) the Aggregate Exposure and (b) prior to the occurrence of the DIP Term Loan Closing Date, the amount of the Aggregate Exposure (as defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement, and on and after the occurrence of the DIP Term Loan Closing Date, the amount of Qualified Reinstated Prepetition Obligations.

"Aggregate Revolving Commitments" shall mean, at any time, the aggregate amount of the North American Revolving Commitments and the Swiss Revolving Commitments of all Revolving Lenders.

"Agreement" shall mean this Senior Secured Debtor-in-Possession Revolving And Term Credit Agreement, as may be amended, restated, amended and restated, modified, supplemented, extended or renewed from time to time.

"ALTA" shall mean the American Land Title Association.

"ALTA Survey" shall mean, with respect to real property located in the United States, an ALTA survey (or its equivalent in non-ALTA jurisdictions) as of a date reasonably acceptable to the Administrative Agent and the title company issuing the applicable Mortgage Policy, certified to the Administrative Agent and the issuer of the Mortgage Policy in a manner reasonably satisfactory to the Administrative Agent by a land surveyor duly registered and licensed in the state in which such real property is located and reasonably acceptable to the Administrative Agent, showing no Liens other than the Permitted Liens and containing any Table A items (or their equivalent in non-ALTA jurisdictions) reasonably requested by the Administrative Agent and sufficient in all respects to remove the standard survey exceptions from the applicable Mortgage Policy and to allow the issuance of such survey-related endorsements that the Administrative Agent shall reasonably request.

"Alternative Currency" shall mean, (a) with respect to the North American Revolving Facility, each currency approved in accordance with Section 1.04 and (b) with respect to the Swiss Revolving Facility, (i) Pound Sterling, (ii) Euros, (iii) Australian Dollars and (iv) Swiss Francs, in each case of this clause (b) together with each other currency that is approved in accordance with Section 1.04.

"AML Legislation" shall mean anti-money laundering, anti-terrorist financing, government sanction and "know your client" laws, in each case to the extent applicable to the Loan Parties.

"Ancillary Document" shall have the meaning assigned to such term in Section 13.09(b).

"Anti-Corruption Laws" shall mean all laws, rules, and regulations of any jurisdiction applicable to the Lead Borrower or any of its Subsidiaries from time to time concerning or relating to bribery or corruption or money-laundering.

"Applicable Account Diligence" shall have the meaning assigned to such term in the definition of "Eligible Accounts".

"Applicable DIP Order" shall have the meaning assigned to such term in the Interim Order.

"Applicable Inventory Diligence" shall have the meaning assigned to such term in the definition of "Eligible Inventory".

"Applicable Margin" shall mean, (i) with respect to the DIP ABL Facilities, 3.50% per annum in the case of any LIBO Rate Loans and Overnight LIBO Rate Loans and 2.50% per annum in the case of any Base Rate Loans and (ii) with respect to the DIP Term Facility, 7.00% per annum in the case of any LIBO Rate Loans and 6.00% per annum in the case of any Base Rate Loans.

"Applicable Time" shall mean, with respect to any borrowings and payments in any Alternative Currency, the local time in the place of settlement for such Alternative Currency as may be determined by the Administrative Agent or the applicable Issuing Bank, as the case may be, to be necessary for timely settlement on the relevant date in accordance with normal banking procedures in the place of payment and, in the case of Notices of Borrowings and payments by Borrowers, notified in writing to the Lead Borrower.

"Approved Fund" shall mean any Person (other than a natural person) that is engaged in making, purchasing, holding or investing in bank loans and similar extensions of credit in the ordinary course of its business and that is administered or managed by (a) an existing Lender, (b) an Affiliate or branch of an existing Lender or (c) an entity or an Affiliate of an entity that administers or manages an existing Lender.

"Asset Sale" shall mean (x) any Disposition (including any sale and lease-back of assets and any mortgage or lease of owned Real Property) to any person of any asset or assets of the Lead Borrower or any Subsidiary and (y) any sale of any Equity Interests by any Subsidiary to a person other than the Lead Borrower or a Subsidiary.

"Assignment and Assumption" shall mean an Assignment and Assumption substantially in the form of Exhibit K (appropriately completed) or such other form as shall be acceptable to the Administrative Agent and the Lead Borrower (such approval by the Lead Borrower not to be unreasonably withheld, delayed or conditioned).

"AUD Rate" shall mean, for any Loans denominated in Australian Dollars, the AUD Screen Rate or, if applicable pursuant to the definition of "LIBO Rate", the applicable Interpolated Rate or such other rate as determined pursuant to the terms of Section 3.01, as applicable.

"AUD Screen Rate" shall mean, with respect to any Interest Period, the Australian Bank Bill Swap Reference Rate (Bid) as administered by ASX Benchmarks Pty Limited (or any other Person that takes over the administration of such rate) for a tenor equal to such Interest Period displayed on page BBSY of the Reuters screen (or, in the event such rate does not appear on a Reuters page or screen, on any successor or substitute page on such screen or service that displays such rate, or on the appropriate page of such other information service that publishes such rate from time to time as selected by the Administrative Agent in its reasonable discretion and applied generally by the Administrative Agent to other credit facilities for which it acts as administrative agent for purposes of determining such rate) at or about 11:00 a.m. (Sydney, Australia time) on the Quotation Day for such Interest Period.

"Australian Account Control Deed" means each account control agreement over an Australian ADI Account held by a Loan Party between that Loan Party, the account bank that holds that Australian ADI Account and the Australian Security Trustee.

"Australian ADI Account" shall have the meaning assigned to such term in Section 10 of the Australian PPSA.

"Australian Borrowing Base" shall mean, at any time of calculation, an amount equal to the sum of, without duplication:

(a) (i) the book value of all Eligible Accounts of the Australian Loan Parties owing by an Account Debtor that has an Investment Grade Rating multiplied by the advance rate of 90% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 95%) plus (ii) the book value of all other Eligible Accounts of the Australian Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus

(b) the lesser of (i) the Cost of Eligible Inventory of the Australian Loan Parties multiplied by the advance rate of 75% and (ii) the Cost of Eligible Inventory of the Australian Loan Parties multiplied by the appraised NOLV Percentage of Eligible Inventory of the Australian Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); minus

(c) any Reserves pertaining to the Australian Loan Parties established from time to time by the Administrative Agent in accordance herewith (without duplication of any Reserves deducted in the calculation of any other Borrowing Base).

"Australian Collateral" shall mean all property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Australian Security Document (including any Additional Security Documents) or will be granted in accordance with requirements set forth in Section 9.12, including, without limitation, all collateral as described in the Australian Security Agreement. For the avoidance of doubt, in no event shall Australian Collateral include Excluded Property.

"Australian Corporations Act" shall mean the Corporations Act 2001 (Cth) of Australia.

"Australian Dollars" shall mean the lawful currency of Australia.

"Australian GAAP" shall mean generally accepted accounting principles, standards and practices in Australia.

"Australian Loan Parties" shall mean, individually and collectively, each Australian Subsidiary that is a Guarantor.

"Australian Pension Plan" shall mean a superannuation, retirement benefit or pension fund (whether established by deed or under any statute of Australia or any state or territory of Australia) contributed to by, or to which there is or may be an obligation to contribute by, any Loan Party in respect of its Australian employees and officers or former employees and officers.

"Australian Priority Payables Reserve" shall mean reserves for amounts which rank or are capable of ranking in priority to the Liens granted to the Australian Security Trustee under the Security Documents, including without limitation, in the Permitted Discretion of the Administrative Agent, any such amounts due or which may become due and not paid for wages, long service leave, retrenchment, payment in lieu of notice, or vacation pay (including in all respects amounts protected by or payable pursuant to the Fair Work Act 2009 (Cth of Australia)), any preferential claims as set out in the Australian Corporations Act, amounts due or which may become due and not paid under any legislation relating to workers' compensation or to employment insurance, all amounts deducted or withheld and not paid and remitted when due under the Taxation Administration Act 1953 (Cth of Australia) (but excluding Pay as You Go income withholding tax) and amounts in the future, currently or past due and not contributed, remitted or paid in respect of any Australian Pension Plan, together with any charges which may be levied by a Governmental Authority as a result of any default in payment obligations in respect of any Australian Pension Plan.

"Australian PPSA" shall mean the Personal Property Securities Act 2009 (Cth) of Australia.

"Australian Security Agreement" shall mean:

(a) each Initial Australian Security Agreement; and

(b) any other security deed, mortgage or agreement entered into, after the date of this Agreement by any Australian Loan Party or any other Person in respect of Australian Collateral for the benefit of the Secured Parties (in each case as required by this Agreement or any other Loan Document).

"Australian Security Documents" shall mean the Australian Security Agreement, the Australian Security Trust Deed and each Australian Account Control Deed.

"Australian Security Trust Deed" shall mean the Security Trust Deed, dated on or about the date of this Agreement, among each Loan Party thereto, the Administrative Agent and the Australian Security Trustee.

"Australian Security Trustee" shall mean JPMCB or any other security trustee appointed under this Agreement and the Australian Security Trust Deed.

"Australian Subsidiary" shall mean any Subsidiary of the Lead Borrower that is organized under the laws of Australia.

"Australian Tax Act" shall mean the Income Tax Assessment Act 1936 of Australia.

"Australian Tax Consolidated Group" shall mean a "Consolidated Group" or an "MEC Group" as defined in the Australian Tax Act.

"Availability Conditions" shall be deemed satisfied only if:

(a) (i) each Revolving Lender's North American Revolving Exposure, when aggregated with its "North American Revolving Exposure" (as defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement, does not exceed such Revolving Lender's North American Revolving Commitment and (ii) the aggregate North American Revolving Exposures, when aggregated with the aggregate "North American Revolving Exposures" (as defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement of the lenders thereunder, does not exceed the aggregate North American Revolving Commitments;

(b) (i) each Revolving Lender's Swiss Revolving Exposure, when aggregated with its "Swiss Revolving Exposure" (as defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement, does not exceed such Revolving Lender's Swiss Revolving Commitment and (ii) the aggregate Swiss Revolving Exposures, when aggregated with the aggregate "Swiss Revolving Exposures" (as defined in the Prepetition Credit Agreement) under the Prepetition Credit Agreement of the lenders thereunder, does not exceed the aggregate Swiss Revolving Commitments;

(c) the aggregate Revolving Exposures of all Revolving Lenders with respect to the U.S. Loan Parties when aggregated with the "Revolving Exposures of all Lenders with respect to the U.S. Loan Parties" (as such phrase is defined and interpreted under the Prepetition Credit Agreement) under the Prepetition Credit Agreement do not exceed an amount equal to (i) the U.S. Borrowing Base minus (ii) the excess, if any, of (A) the aggregate Revolving Exposures of all Revolving Lenders with respect to the Foreign Loan Parties when aggregated with the "Revolving Exposures of all Lenders with respect to the Foreign Loan Parties" (as such phrase is defined and interpreted under the Prepetition Credit Agreement) over (B) the sum of the Australian Borrowing Base plus the Swiss Borrowing Base; and

(d) the aggregate Revolving Exposures of all Revolving Lenders with respect to the Foreign Loan Parties when aggregated with the "Revolving Exposures of all Lenders with respect to the Foreign Loan Parties" (as such phrase is defined and interpreted under the Prepetition Credit Agreement) under the Prepetition Credit Agreement do not exceed an amount equal to (i) the sum of the U.S. Borrowing Base plus the Australian Borrowing Base plus the Swiss Borrowing Base minus (ii) the aggregate Revolving Exposures of all Revolving Lenders with respect to the U.S. Loan Parties when aggregated with the "Revolving Exposures of all Lenders with respect to the U.S. Loan Parties" (as such phrase is defined and interpreted under the Prepetition Credit Agreement).

"Bail-In Action" shall mean the exercise of any Write-Down and Conversion Powers by the applicable Resolution Authority in respect of any liability of an Affected Financial Institution.

"Bail-In Legislation" means (a) with respect to any EEA Member Country implementing Article 55 of Directive 2014/59/EU of the European Parliament and of the Council of the European Union, the implementing law, regulation rule or requirement for such EEA Member Country from time to time which is described in the EU Bail-In Legislation Schedule and (b) with respect to the United Kingdom, Part I of the United Kingdom Banking Act 2009 (as amended from time to time) and any other law, regulation or rule applicable in the United Kingdom relating to the resolution of unsound or failing banks, investment firms or other financial institutions or their affiliates (other than through liquidation, administration or other insolvency proceedings).

"Bail-In Lender" shall have the meaning assigned to such term in Section 3.04.

"Bank Product" shall mean any of the following products, services or facilities extended to the Lead Borrower or any of its Subsidiaries: (a) Cash Management Services; (b) products under each Swap

Contract entered into by a Foreign Subsidiary as in existence on the DIP Closing Date and set forth on a notice delivered to the DIP Term Lender Notice Office and any extension or rollover thereof so long as the type of the Swap Contract shall not be changed and the "notional" amount thereunder shall not be increased without the consent of the Required DIP Term Lenders; (c) commercial credit card, purchase card and merchant card services; (d) [reserved] and (e) other banking products or services (including, without limitation, demand lines of credit) as may be requested by the Lead Borrower or any of its Subsidiaries and agreed to by the Required DIP Term Lenders, other than Letters of Credit issued pursuant to the provisions of Section 2.13 by the Administrative Agent or any Issuing Bank.

"Bank Product Debt" shall mean Indebtedness and other obligations of a Borrower or any of its Subsidiaries relating to Bank Products.

"Bank Product Reserve" shall mean the aggregate amount of reserves established by the Administrative Agent from time to time in its Permitted Discretion in respect of Secured Bank Product Obligations (which shall at all times include a reserve for the maximum amount of all Noticed Hedges outstanding at that time); *provided* that at any time and from time to time, upon receipt of a written notice from the Required DIP Term Lenders, the Administrative Agent shall impose a reserve in an amount designated in such written notice so long as such amount shall not exceed the maximum amount of Secured Bank Product Obligations set forth in the notices delivered by the Secured Bank Product Provider set forth in the definition of "Secured Bank Product Obligations".

"Bankruptcy Code" shall mean Title 11 of the United States Code entitled "Bankruptcy," as now or hereafter in effect, and any successor thereto.

"Bankruptcy Court" shall have the meaning assigned to such term in the recitals of this Agreement.

"Base Rate" shall mean, for any day, a rate *per annum* equal to the greatest of (a) the Prime Rate in effect on such day, (b) the NYFRB Rate in effect on such day *plus* ½ of 1.00%, (c) the LIBO Rate for a one month Interest Period on such day (or if such day is not a Business Day, the immediately preceding Business Day) *plus* 1.00%; provided that the LIBO Rate for any day shall be based on the LIBO Rate at approximately 11:00 a.m. London time on such day and (d) 2.00%. Any change in the Base Rate due to a change in the Prime Rate, the NYFRB Rate or the LIBO Rate shall be effective from and including the effective date of such change in the Prime Rate, the NYFRB Rate or the LIBO Rate, respectively.

"Base Rate Loan" shall mean each Loan which is designated or deemed designated as a Loan bearing interest at the Base Rate by the Lead Borrower at the time of the incurrence thereof or conversion thereto. All Base Rate Loans shall be denominated in U.S. Dollars.

"Beneficial Ownership Certification" shall mean a certification regarding beneficial ownership or control as required by the Beneficial Ownership Regulation.

"Beneficial Ownership Regulation" shall mean 31 C.F.R. § 1010.230.

"BHC Act Affiliate" of a party shall mean an "affiliate" (as such term is defined under, and interpreted in accordance with, 12 U.S.C. § 1841(k)) of such party.

"Bidding Procedures" shall mean the bidding procedures in substantially the form attached as Exhibit N hereto, as the same may be subsequently amended, restated or otherwise modified with the prior written consent of the Administrative Agent.

"Bidding Procedures Motion" shall mean the motion filed with the Bankruptcy Court seeking approval of the Bidding Procedures, which shall be reasonably satisfactory in form and substance to the Administrative Agent.

"Bidding Procedures Order" shall mean the order of the Bankruptcy Court approving the Bidding Procedures and the Bidding Procedures Motion, which shall be reasonably satisfactory in form and substance to the Administrative Agent.

"Board" shall mean the Board of Governors of the Federal Reserve System of the United States of America.

"Borrowers" shall mean, subject to Section 13.18(b)(2), the U.S. Borrowers and the Swiss Borrower.

"Borrowing" shall mean the borrowing of the same Type, Class and in the same currency, of Loan by the Borrowers from all the Lenders under the applicable Facility on a given date (or resulting from a conversion or conversions on such date), having, in the case of LIBO Rate Loans, the same Interest Period; provided that Base Rate Loans incurred pursuant to Section 3.01 shall be considered part of the related Borrowing of LIBO Rate Loans.

"Borrowing Base" shall mean any of the U.S. Borrowing Base, the Australian Borrowing Base and the Swiss Borrowing Base, as applicable.

"Borrowing Base Certificate" shall mean a certificate of a Responsible Officer of the Lead Borrower in form and substance reasonably satisfactory to the Administrative Agent.

"Borrowing Base Real Properties" shall mean the Material Real Properties that are identified on Schedule 1.01(B) on the DIP Closing Date other than the Real Property located at 731 Highway 142 & 3200 Butzen Dr., Poplar Bluff, MO 63901-8159. For the avoidance of doubt, the Fourth Amendment Mortgage Properties shall not constitute Borrowing Base Real Properties.

"Business Day" shall mean any day that is any day except Saturday, Sunday and any day which shall be in New York City a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in New York City, and (A) in connection with Loans to the Swiss Borrower, any day except Saturday, Sunday and any day which shall be in London a legal holiday or a day on which banking institutions are authorized or required by law or other government action to close in London, (B) if such day relates to (x) any Loans denominated in Euros or (y) payment or purchase of Euros, any day on which TARGET2 payment system is open for the settlement of payments in Euros, (C) if such day relates to (x) any Loans denominated in Pound Sterling or (y) payment or purchase of Pound Sterling, any day on which banks are open for general business in London and (D) with respect to all notices and determinations in connection with, and payments of principal and interest on, LIBO Rate Loans, any day which is a Business Day which is also a day for trading by and between banks in the New York or London interbank market or the principal financial center of such Alternative Currency.

"Canadian Collateral" shall mean all property (whether real, personal or otherwise) located in Canada with respect to which any security interests have been granted (or purported to be granted) pursuant to any U.S. Security Document (including any Additional Security Documents) or will be granted in accordance with requirements set forth in Section 9.12, including, without limitation, all collateral as described in the U.S. Security Documents. For the avoidance of doubt, in no event shall Canadian Collateral include Excluded Property.

"Canadian Dollars" and "C$" shall mean the lawful money of Canada.

"Canadian Economic Sanctions and Export Control Laws" shall mean any Canadian laws, regulations or orders governing transactions in controlled goods or technologies or dealings with countries, entities, organizations, or individuals subject to economic sanctions and similar measures, including the Special Economic Measures Act (Canada), the United Nations Act (Canada), the Freezing Assets of Corrupt Foreign Officials Act (Canada), Part II.1 of the Criminal Code (Canada) and the Export and Import Permits Act (Canada), and any related regulations.

"Canadian PPSA" shall mean the Personal Property Security Act (Ontario), as amended; provided that, in the event that, by reason of mandatory provisions of law, the validity, perfection and effect of perfection or non-perfection of a security interest or other applicable Lien is governed by other personal property security laws in any other province or territory of Canada, the term "Canadian PPSA" shall mean such other personal property security laws (including the *Civil Code* (Quebec)) of such other province or territory of Canada.

"Canadian Unpaid Supplier Reserve" shall mean, with respect to each U.S. Loan Party, a reserve established by the Administrative Agent in the exercise of its Permitted Discretion in respect of (i) any Inventory that is subject to rights of a supplier to repossess goods pursuant to Section 81.1 of the Bankruptcy and Insolvency Act (Canada) as amended, or any other laws of Canada or laws of any Province of Canada that grant repossession, revendication or similar rights to an unpaid supplier, and (ii) Accounts, Inventory and/or proceeds thereof subject to security interests, trusts or repossessory rights in favor of farmers under Section 81.2 of the *Bankruptcy and Insolvency Act* (Canada), in each case, where such supplier's or farmer's right ranks or is capable of ranking in priority to, or *pari passu* with, one or more of the Liens granted in the Security Documents.

"Capitalized Lease Obligations" shall mean an obligation that is required to be accounted for as a financing or capital lease (and, for the avoidance of doubt, not a straight-line or operating lease) on both the balance sheet and income statement for financial reporting purposes in accordance with GAAP as in effect prior to giving effect to the adoption of ASU No. 2016-02 "Leases (Topic 842)" and ASU No. 2018-11 "Leases (Topic 842)" and the stated maturity date thereof shall be the date of the last payment of rent or any other amount due under such lease prior to the first date upon which such lease may be prepaid by the lessee without payment of a penalty. In the case of an Australian Loan Party, it shall not include any liability in respect of a lease or hire purchase contract which would, in accordance with Australian GAAP in force prior to January 1, 2019, have been treated as an operating lease.

"Carve-Out" has the meaning given to that term in the DIP Orders.

"Carve-Out Reserves" shall mean, at any time, such reserves as Administrative Agent, from time to time, determines in its Permitted Discretion in respect of the Carve-Out.

"Cash Collateralize" shall mean to pledge and deposit with or deliver to the Administrative Agent for deposit into the LC Collateral Account, for the benefit of the Administrative Agent, the Issuing Banks or the Swingline Lender (as applicable) and the Revolving Lenders, cash (or other credit support in the form of a standby letter of credit in form and substance, and issued by a financial institution, reasonably acceptable to the Administrative Agent and the applicable Issuing Bank) as collateral for the LC Exposure, Obligations in respect of Swingline Loans, or obligations of Revolving Lenders to fund participations in respect of either thereof (as the context may require), cash in accordance with Section 2.13(j).

"Cash Collateral" shall have a meaning correlative to the foregoing and shall include the proceeds of such cash collateral and other credit support.

"Cash Equivalents" shall mean:

(i) U.S. Dollars, Canadian Dollars, Pound Sterling, Euros, the national currency of any participating member state of the European Union or, in the case of any Foreign Subsidiary, such local currencies held by it from time to time in the ordinary course of business;

(ii) readily marketable direct obligations of any member of the European Economic Area or Switzerland or any agency or instrumentality thereof or obligations unconditionally guaranteed by the full faith and credit of such country, and, at the time of acquisition thereof, having a credit rating of at least Aa3 (or the equivalent grade) by Moody's or AA- by S&P;

(iii) marketable general obligations issued by any state of the United States or any political subdivision thereof or any instrumentality thereof that are guaranteed by the full faith and credit of such state, and, at the time of acquisition thereof, having a credit rating of at least Aa3 (or the equivalent grade) by Moody's or AA- by S&P;

(iv) securities or any other evidence of Indebtedness or readily marketable direct obligations issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality of the United States government (provided that the full faith and credit of the United States is pledged in support of those securities), in such case having maturities of not more than twelve (12) months from the date of acquisition;

(v) certificates of deposit and eurodollar time deposits with maturities of twenty-four (24) months or less from the date of acquisition, bankers' acceptances with maturities not exceeding twenty-four (24) months and overnight bank deposits, in each case, with any Lender party to this Agreement at the time of acquisition thereof or any commercial bank or trust company having, or which is the principal banking subsidiary of a bank holding company having, a long-term unsecured debt rating of at least "A" or the equivalent thereof from S&P or "A2" or the equivalent thereof from Moody's;

(vi) repurchase obligations with a term of not more than thirty (30) days for underlying securities of the types described in clauses (iv) and (v) above entered into with any financial institution meeting the qualifications specified in clause (v) above;

(vii) commercial paper having one of the two highest ratings obtainable from Moody's or S&P and, in each case, maturing within twenty-four (24) months after the date of acquisition;

(viii) money market funds at least 95% of the assets of which constitute Cash Equivalents of the kinds described in clauses (i) through (vii) of this definition; and

(ix) Indebtedness or preferred stock issued by Person having a credit rating of at least A-2 (or the equivalent grade) by Moody's or A by S&P, maturing within twenty-four (24) months after the date of acquisition.

"Cash Management Services" shall mean any services provided from time to time to any Borrower or any of its Subsidiaries in connection with operating, collections, payroll, trust, or other depository or disbursement accounts, including automated clearinghouse, e-payable, electronic funds transfer, wire transfer, controlled disbursement, overdraft, depository, information reporting, lockbox and stop payment services.

"Change in Law" shall mean (a) the adoption or taking effect of any law, rule, regulation or treaty after the DIP Closing Date or, as to any Lender, if later, the date such Lender becomes a party hereto, (b)

any change in law, rule, regulation or treaty or in the administration, interpretation or application thereof by any Governmental Authority after the DIP Closing Date or, as to any Lender, if later, the date such Lender becomes a party hereto or (c) compliance by any Lender, Issuing Bank or Swingline Lender (or, for purposes of Section 3.01(b), by any lending office of such Lender or by such Lender's holding company, if any) with any written request, guideline or directive (whether or not having the force of law) of any Governmental Authority made or issued after the DIP Closing Date or, as to any Lender, if later, the date such Lender becomes a party hereto; provided, however, that, notwithstanding anything herein to the contrary, except to the extent they are merely proposed and not in effect, (x) all requests, rules, guidelines or directives under or issued in connection with the Dodd-Frank Wall Street Reform and Consumer Protection Act, all interpretations and applications thereof and any compliance by a Lender with any request or directive relating thereto and (y) all requests, rules, guidelines or directives promulgated under or in connection with, all interpretations and applications of, and any compliance by a Lender, Issuing Bank or Swingline Lender with any request or directive relating to the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States of America or foreign regulatory authorities, in each case pursuant to Basel III (including CRD IV), shall in each case under clauses (x) and (y) above be deemed to be a "Change in Law" regardless of when adopted, enacted, issued or implemented but, for purposes of Section 3.01, only to the extent it is the general policy of a Lender, Issuing Bank or Swingline Lender, as applicable, to impose applicable increased costs or costs in connection with capital adequacy requirements similar to those described in clauses (b) and (c) of Section 3.01 generally on other similarly situated borrowers under similar circumstances under agreements permitting such impositions.

"Change of Control" shall mean (a) the acquisition of ownership, directly or indirectly, beneficially or of record, by any "person" or "group" (within the meaning of the Exchange Act and the rules of the SEC thereunder as in effect on the DIP Closing Date, but excluding any employee benefit plan and any person or entity acting in its capacity as trustee, agent or other fiduciary or administrator of any such plan) or any person or group of persons acting in concert of Equity Interests representing more than 50% of the aggregate ordinary voting power for the election of directors of the Lead Borrower (determined on a fully diluted basis); (b) the sale, lease or transfer (other than by way of merger, amalgamation, consolidation or other business combination transaction, and excluding the creation of a Lien), in one or a series of related transactions, of all or substantially all of the assets of the Lead Borrower and its Subsidiaries, taken as a whole, to any person, other than the Lead Borrower or any of its Subsidiaries; or (c) except as otherwise permitted by this Agreement, the Lead Borrower shall cease, directly or indirectly, to own and control legally and beneficially all of the Equity Interests in any other Borrower.

"Chapter 11 Cases" shall have the meaning assigned to such term in the recitals to this Agreement.

"Chattel Paper" shall have the meaning assigned to such term in Article 9 of the UCC or, if applicable, in the Canadian PPSA or the Australian PPSA (section 10).

"Claims" shall have the meaning assigned to such term in Section 14.02(a).

"Class" (a) when used with respect to Lenders, refers to whether such Lender has a Loan or Commitment with respect to the North American Revolving Facility, the Swiss Revolving Facility or the DIP Term Facility, (b) when used with respect to Commitments, refers to whether such Commitments are the North American Revolving Commitments, the Swiss Revolving Commitments or the DIP Term Commitments and (c) when used with respect to Loans or a Borrowing, refers to whether such Loans, or the Loans comprising such Borrowing, are Loans under the North American Revolving Facility, Loans under the Swiss Revolving Facility or Loans under the DIP Term Facility.

"Closing Date DIP Term Amount" shall have the meaning assigned to such term in Section 2.01(a)(iv).

"Co-Syndication Agents" shall mean Bank of America, N.A., Bank of Montreal and Wells Fargo Bank, National Association, in their capacities as co-syndication agents under this Agreement.

"Code" shall mean the U.S. Internal Revenue Code of 1986, as amended from time to time.

"Collateral" shall mean, collectively, the U.S. Collateral and the Foreign Collateral.

"Collateral Agent" shall mean JPMCB, in its capacity as Collateral Agent for the Secured Parties, and, where the context requires, shall include JPMCB in its capacity as Australian Security Trustee, and shall include its branch offices and affiliates in any applicable jurisdiction and any successor to the Collateral Agent appointed pursuant to Section 12.10.

"Collateral and Guarantee Requirement" shall mean the requirement that (in each case, subject to the last two paragraphs of Section 9.10, and subject to Schedule 9.12 (as may be updated pursuant to Section 13.12 of this Agreement) (which, for the avoidance of doubt, shall override the applicable clauses of this definition of "Collateral and Guarantee Requirement")):

(a) on the DIP Closing Date, the Collateral Agent shall have received:

(i) from (A) each U.S. Loan Party and (B) each other Loan Party that owns Equity Interests of a person incorporated or organized under the law of the United States, any state thereof, or the District of Columbia (other than Excluded Securities) (provided that the grant by any such other Loan Party under the Initial U.S. Security Agreement shall be solely with respect to such Equity Interests and related rights and assets as expressly set forth in the Initial U.S. Security Agreement), a counterpart of the Initial U.S. Security Agreement,

(ii) from each Loan Party, a counterpart of the Guarantee Agreement, in each case duly executed and delivered on behalf of such person,

(iii) from each Australian Loan Party, each Initial Australian Security Agreement to which it is a party,

(iv) from the Lead Borrower, the Initial Australian Security Agreement in paragraph (c) of the definition thereof,

(v) from each Swiss Loan Party, each Initial Dutch Security Agreement and each Initial Swiss Security Agreement to which it is a party, and

(vi) from each Swiss Loan Party, a valid and enforceable first ranking security interest (subject to any Liens permitted under Section 10.02(d) or (n)(i) of this Agreement, solely to the extent such Liens arise by operation of law and either (x) such Liens are permitted by the related Deposit Account Control Agreement or (y) the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Liens) over each of its Collection Accounts governed by the laws of the jurisdiction where the relevant Collection Account is located (including the Initial UK Security Agreement);

(b) on the DIP Closing Date, (i)(A) all outstanding Equity Interests directly owned by the Loan Parties, other than Excluded Securities, and (B) all Indebtedness owing to any Loan Party, other than Excluded Securities, shall have been pledged or assigned for security purposes pursuant to the Security Documents, (ii) the Collateral Agent shall have received certificates, updated share registers (where necessary under the laws of any applicable jurisdiction in order to create a perfected security interest in such Equity Interests) or other instruments (if any) representing such Equity Interests and any notes or other instruments required to be delivered pursuant to the applicable Security Documents, together with stock powers, note powers, stock transfer forms or other instruments of transfer with respect thereto (as applicable) endorsed in blank and appropriate authorities to complete and date same and certified copy share registers and (iii) the Collateral Agent shall have received with respect to each Mortgaged Property located in the United States of America or any State thereof as of the DIP Closing Date, the Flood Documentation; provided that to the extent any such Flood Documentation cannot be delivered on or prior to the DIP Closing Date after the Borrowers' use of commercially reasonable efforts to do so and without undue burden and expense, then the provision of such Flood Documentation may be delivered within thirty (30) days after the DIP Closing Date (or such longer period as agreed to by the Administrative Agent in its sole discretion) but in any event, prior to the delivery of the related Mortgage for such Real Property; provided, further, that any requirement to deliver certificates, notes or other instruments pursuant to this clause (b) shall be deemed satisfied to the extent any such certificates, notes or other instruments were delivered to JPMCB in its capacity as the Prepetition Agent prior to the date hereof;

(c) in the case of any Person that becomes a Borrower or a Guarantor after the DIP Closing Date, the Collateral Agent shall have received (i) a supplement to the Guarantee Agreement, (ii) a supplement to the applicable Security Document referred to in clause (a) above and any other Security Documents, if applicable, in the form specified therefor or otherwise reasonably acceptable to the Administrative Agent, in each case, duly executed and delivered on behalf of such Borrower or Guarantor and (iii) if requested by the Collateral Agent, such documents, certificates and opinions with respect to such Person of the type described in Section 6.01;

(d) after the DIP Closing Date (x) all outstanding Equity Interests of any person that becomes a Borrower or Guarantor after the DIP Closing Date and that are held by a Loan Party and (y) all Equity Interests directly acquired by a Loan Party, and Indebtedness owing to a Loan Party after the DIP Closing Date, in each case other than Excluded Securities, shall have been pledged pursuant to the Security Documents, together with stock powers, stock transfer forms or other instruments of transfer with respect thereto (as applicable) endorsed in blank;

(e) as of the DIP Closing Date, except as otherwise contemplated by this Agreement or any Security Document, all documents and instruments, including Uniform Commercial Code, Australian PPSA and Canadian PPSA financing statements, and filings with the United States Copyright Office, the United States Patent and Trademark Office and all other actions reasonably requested by the Collateral Agent (including those required by applicable Requirements of Law) to be delivered, filed, registered or recorded (x) to create the Liens purported to be created by the Foreign Security Documents (in each case, including any supplements thereto) and (y) otherwise in respect of the U.S. Security Documents and to perfect such Liens to the extent required by the Security Documents, shall have been delivered, filed, registered or recorded or delivered to the Collateral Agent for filing, registration or the recording substantially concurrently with, or promptly following, the execution and delivery of each such Security Document;

(f) as of the DIP Closing Date, evidence of the insurance (if any) required by the terms of Section 9.02 hereof shall have been received by the Collateral Agent;

(g) after the DIP Closing Date, the Collateral Agent shall have received such other Security Documents as may be required to be delivered pursuant to Section 9.10 or the Security Documents;

(h) within (x) thirty (30) days after the DIP Closing Date (or on such later date as the Administrative Agent may agree in its reasonable discretion) and (y) the time periods set forth in Section 9.10 with respect to Mortgaged Properties encumbered pursuant to such Section 9.10, the Collateral Agent shall have received:

(A) counterparts of each Mortgage to be entered into with respect to each such Mortgaged Property duly executed and delivered by the record owner of such Mortgaged Property and suitable for recording, registering or filing (together with any other forms or undertakings that are required or customary to effect such recording, registration or filing) in all filing, registration or recording offices that the Collateral Agent may reasonably deem necessary or desirable subject to no other Liens except Permitted Liens, at the time of filing, registration or recordation thereof, and

(B) with respect to the Mortgage encumbering each such Mortgaged Property (other than the DIP Closing Date Mortgaged Properties), opinions of local counsel regarding the due authorization, execution and delivery, the enforceability, and perfection of the Mortgages and such other matters customarily covered in real estate mortgage counsel opinions as the Collateral Agent may reasonably request, if and to the extent, and in such form, as local counsel customarily provides such opinions as to such other matters;

provided that, notwithstanding the foregoing, it is hereby understood and agreed that no Real Property may constitute "Eligible Real Property" until the Collateral Agent's receipt of the items described in clause (A) above; and

(i) within (x) thirty (30) days after the DIP Closing Date (or on such later date as the Administrative Agent may agree in its reasonable discretion) and (y) the time periods set forth in Section 9.10 with respect to Mortgaged Properties located in the United States and encumbered pursuant to said Section 9.10, the Collateral Agent shall have received:

(A) a Mortgage Policy, and

(B) an ALTA Survey of each Mortgaged Property (including all improvements, easements and other customary matters thereon reasonably required by the Collateral Agent), as applicable, for which all necessary fees (where applicable) have been paid with respect to properties located in the United States; provided, however, that, so long as the Title Insurer shall accept the same to eliminate the standard survey exceptions from such policy or policies and issue such survey-related endorsements as the Administrative Agent shall reasonably require and to issue a "same as survey" endorsement, in lieu of a new or revised ALTA Survey, the Borrowers may provide a "no material change" affidavit with respect to any prior survey for the respective Mortgaged Property (which prior survey otherwise substantially complies with the foregoing survey requirements).

Notwithstanding anything to the contrary in this Agreement or in the other Loan Documents, but subject to the provisos set forth at the end of clauses (h) and (i) above, it is understood that to the extent any Collateral (other than Collateral with respect to which a lien may be perfected by (A) the entry of the DIP Orders and the filing of a Canadian PPSA or Australian PPSA financing statement, (B) delivery and taking possession of stock or share certificates of the Subsidiaries of the Lead Borrower or (C) the filing of a short form security agreement with the United States Patent and Trademark Office or the United States Copyright

Office) is not or cannot be provided or the security interest of the Collateral Agent therein is not or cannot be perfected on the DIP Closing Date after the use of commercially reasonable efforts by the Borrowers to do so and without undue burden and expense, then the provision and/or perfection of the security interest in such Collateral shall not constitute a condition precedent to the DIP Closing Date or any Credit Event on or within thirty (30) days after the DIP Closing Date and shall instead be required to be delivered and perfected within thirty (30) days after the DIP Closing Date (subject to extension by the Administrative Agent in its sole discretion).

"Collection Account" has the meaning given to that term in Section 9.18(e)(i).

"Collections" has the meaning given to that term in Section 9.18(e)(i).

"Commitment" shall mean, with respect to any Lender, such Lender's Revolving Commitment, DIP Term Commitment, North American LC Commitment, Swiss LC Commitment or Swingline Commitment.

"Commodity Account" shall have the meaning assigned to such term in Article 9 of the UCC or, if applicable, a futures account as defined in the Canadian PPSA.

"Commodity Exchange Act" shall mean the Commodity Exchange Act (7 U.S.C. § 1 et seq.), as amended from time to time, and any successor statute.

"Compliance Certificate" shall mean a certificate of the Responsible Officer of the Lead Borrower substantially in the form of Exhibit J hereto.

"Consolidated Cash Balance" means, at any time, without duplication, (a) the aggregate amount of cash and Cash Equivalents, marketable securities, treasury bonds and bills, certificates of deposit, investments in money market funds and commercial paper, in each case, (i) held or owned by (either directly or indirectly) or otherwise required to be reflected as cash or a cash equivalent asset on the balance sheet of the Lead Borrower and its Subsidiaries, and (ii) not subject to any Lien (other than in favor of the Lenders hereunder and non-consensual statutory Liens), less (b) the sum of (i) any restricted cash or Cash Equivalents (x) as a result of foreign laws or requirements delaying or prohibiting the repatriation of such cash or Cash Equivalents and maintained in the applicable jurisdiction as of the DIP Closing Date and/or (y) to pay royalty obligations, working interest obligations, suspense payments, severance taxes, payroll, payroll taxes, other taxes, employee wage and benefit obligations and trust and fiduciary obligations or other obligations of the Lead Borrower or any Subsidiary to third parties and for which the Lead Borrower or such Subsidiary has issued checks or has initiated wires or ACH transfers (or, in the Lead Borrower's discretion, will issue checks or initiate wires or ACH transfers within five (5) business days) in order to pay such obligations, (ii) other amounts for which the Lead Borrower or such Subsidiary has issued checks or has initiated wires or ACH transfers but have not yet been subtracted from the balance in the relevant account of the Lead Borrower or such Subsidiary, (iii) while and to the extent refundable, any cash or Cash Equivalents of the Lead Borrower or any Subsidiaries constituting purchase price deposits held in escrow pursuant to a binding and enforceable purchase and sale agreement with a third party containing customary provisions regarding the payment and refunding of such deposits, (iv) amounts held in Excluded Accounts (other than Excluded Accounts under clause (vi) of the definition of such term), (v) any cash or Cash Equivalents transferred pursuant to the U.S. Sweep or the Foreign Sweep and (vi) any cash or Cash Equivalents held by any Foreign Subsidiary that is not a Loan Party.

"Consolidated Total Assets" shall mean, as of any date of determination, the total assets of the Lead Borrower and the Subsidiaries, determined on a consolidated basis in accordance with GAAP, as set forth on the consolidated balance sheet of the Lead Borrower as of the last day of the Test Period ending

immediately prior to such date for which financial statements of the Lead Borrower have been delivered (or were required to be delivered) pursuant to Section 9.04(a) or 9.04(b), as applicable. Consolidated Total Assets shall be determined on a Pro Forma Basis.

"Control" shall mean the possession, directly or indirectly, of the power to direct or cause the direction of the management or policies of a person, whether through the ownership of voting securities, by contract or otherwise, and "Controls," "Controlled" and "Controlling" shall have meanings correlative thereto.

"Cost" shall mean, as reasonably determined by the Administrative Agent in good faith, with respect to Inventory, the lower of (a) cost computed on a specific identification or first in first out basis or (b) market value, provided that for purposes of the calculation of a Borrowing Base, the cost of Inventory shall not include (A) the portion of the cost of Inventory equal to the profit earned by any Affiliate on the sale thereof to any Borrower, or (B) write ups or write downs in cost with respect to currency exchange rates.

"Covenant Transaction" shall have the meaning assigned to such term in Section 1.09(b).

"Covered Entity" shall mean any of the following:

(i) a "covered entity" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 252.82(b);

(ii) a "covered bank" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 47.3(b); or

(iii) a "covered FSI" as that term is defined in, and interpreted in accordance with, 12 C.F.R. § 382.2(b).

"Covered Party" shall have the meaning assigned to such term in Section 13.21.

"Creditors' Committee" shall mean a statutory committee of unsecured creditors appointed in the Chapter 11 Cases.

"CRD IV" shall mean (a) Regulation (EU) No 575/2013 of the European Parliament and of the Council of 26 June 2013 on prudential requirements for credit institutions and investment firms; and (b) Directive 2013/36/EU of the European Parliament and of the Council of 26 June 2013 on access to the activity of credit institutions and the prudential supervision of credit institutions and investment firms or any laws, rules or guidance by which CRD IV is implemented.

"Credit Event" shall mean the making of any Loan.

"Credit Extension" shall mean, as the context may require, (i) a Credit Event or (ii) the issuance, amendment to increase the face amount or extend the expiry date, extension or renewal of any Letter of Credit by any Issuing Bank; provided that "Credit Extensions" shall not include conversions and continuations of outstanding Loans.

"Debtor Relief Laws" shall mean the Bankruptcy Code, the Australian Corporations Act, the Dutch Bankruptcy Act (*Faillissementswet*) and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, administration, examinership, moratorium, rearrangement, arrangement, receivership, insolvency, judicial management, reorganization or similar debtor relief laws of the United

States or other applicable jurisdictions from time to time in effect including any proceeding under corporate law or other law of any jurisdiction whereby a corporation or other Person seeks a stay or a compromise of the claims of its creditors against it, each as now and hereafter in effect, any successors to such statutes and any other applicable insolvency or other similar law of any jurisdiction.

"Debtors" shall mean collectively each of the entities listed on Schedule 1.01(i).

"Default" shall mean any event, act or condition which with notice or lapse of time, or both, would constitute an Event of Default.

"Default Right" has the meaning assigned to that term in, and shall be interpreted in accordance with, 12 C.F.R. §§ 252.81, 47.2 or 382.1, as applicable.

"Defaulting Lender" shall mean, any Lender that (a) has failed to (i) fund all or any portion of its Loans within two (2) Business Days after the date such Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the Lead Borrower in writing that such failure is the result of such Lender's determination that one or more conditions precedent to funding (each of which conditions precedent, together with any applicable default, shall be specifically identified in such writing) has not been satisfied, or (ii) pay to the Administrative Agent, any Issuing Bank, the Swingline Lender or any other Lender any other amount required to be paid by it hereunder (including in respect of its participation in Letters of Credit or Swingline Loans) within two (2) Business Days after the date when due, (b) has notified the Lead Borrower or the Administrative Agent in writing that it does not intend to comply with its funding obligations hereunder, or has made a public statement to that effect (unless such writing or public statement relates to such lender's obligation to fund a Loan hereunder and states that such position is based on such Lender's determination that a condition precedent to funding (which condition precedent, together with any applicable default, shall be specifically identified in such writing or public statement) cannot be satisfied), (c) has failed, within three (3) Business Days after written request by the Administrative Agent or the Lead Borrower, to confirm in writing to the Administrative Agent and the Lead Borrower that it will comply with its prospective funding obligations hereunder (provided that such Lender shall cease to be a Defaulting Lender pursuant to this clause (c) upon receipt of such written confirmation by the Administrative Agent and the Lead Borrower), or (d) has, or has a direct or indirect parent company that has other than via an Undisclosed Administration, (i) become the subject of (A) a proceeding under any Debtor Relief Law or (B) a Bail-In Action, or (ii) had appointed for it a receiver, interim receiver, custodian, conservator, trustee, monitor, administrator, assignee for the benefit of creditors or similar Person charged with the reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state, federal or foreign regulatory authority acting in such a capacity; provided further that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Equity Interest in that Lender or any direct or indirect parent company thereof by a Governmental Authority so long as such ownership interest does not result in or provide such Lender with immunity from the jurisdiction of courts within the United States or Canada or from the enforcement of judgments or writs of attachment on its assets or permit such Lender (or such Governmental Authority) to reject, repudiate, disavow or disaffirm any contracts or agreements made with such Lender. Any determination by the Administrative Agent that a Lender is a Defaulting Lender under any one or more of clauses (a) through (d) above, and of the effective date of such status, shall be conclusive and binding absent demonstrable error, and such Lender shall be deemed to be a Defaulting Lender of the date established therefor by the Administrative Agent in a written notice of such determination, which shall be delivered by the Administrative Agent to the Lead Borrower and each other Lender promptly following such determination.

"Delaware Divided LLC" shall mean any Delaware LLC which has been formed upon consummation of a Delaware LLC Division.

"Delaware LLC" shall mean any limited liability company organized or formed under the laws of the State of Delaware.

"Delaware LLC Division" shall mean the statutory division of any Delaware LLC into two or more Delaware LLCs pursuant to Section 18-217 of the Delaware Limited Liability Company Act.

"Deposit Account" shall have the meaning assigned to such term in Article 9 of the UCC (and/or with respect to any Deposit Account located outside of the United States, any bank account with a deposit function) and shall include an Australian ADI Account.

"Deposit Account Control Agreement" shall mean a Deposit Account control agreement to be executed by each institution maintaining a Deposit Account (other than an Excluded Account) for any Loan Party, in each case as required by and in accordance with the terms of Section 9.18 (or any similar agreements, documentation or requirement necessary, including notice to and acknowledgement from the relevant institution maintaining a Deposit Account as determined by the Administrative Agent in its Permitted Discretion, to perfect the security interest of the Collateral Agent and/or effect control over the relevant Deposit Accounts).

"Designated Jurisdiction" shall mean any country, region or territory to the extent that such country, region or territory itself is the subject of any Sanctions (on the date of this Agreement, the Crimea region of the Ukraine, Cuba, Iran, North Korea and Syria).

"Dilution Factors" shall mean, without duplication, with respect to any period, the aggregate amount of all deductions, credit memos, returns, adjustments, allowances, bad debt write-offs and other non-cash credits which are recorded to reduce accounts receivable in a manner consistent with current accounting practices of the Loan Parties.

"Dilution Ratio" shall mean, at any date, the amount (expressed as a percentage) equal to (a) the aggregate amount of the applicable Dilution Factors for the twelve (12) most recently ended fiscal months divided by (b) total gross sales for the twelve (12) most recently ended fiscal months.

"Dilution Reserve" shall mean, at any date, the applicable Dilution Ratio multiplied by the Eligible Accounts.

"DIP ABL Budget Covenant" shall have the meaning specified in the Interim Order.

"DIP ABL Facilities" shall mean the North American Revolving Facility and the Swiss Revolving Facility, in each case, provided by the Revolving Lenders pursuant to this Agreement on or after the DIP Closing Date.

"DIP ABL Obligations" shall mean all obligations of the Borrowers to pay Revolving Loans and in respect of Letters of Credit under the DIP ABL Facilities and all interest, fees and charges payable hereunder, and all other payment obligations of the Borrowers or any Guarantor arising under or in relation to any Loan Document, in each case with respect to the DIP ABL Facilities or owing to Lenders under the DIP ABL Facilities, whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired, and including all interest costs, fees, and charges after commencement of an insolvency proceeding regardless of whether allowed or allowable in whole or in part as a claim in such insolvency proceeding.

"DIP Budget Covenants" shall mean the DIP ABL Budget Covenant and the DIP Term Budget Covenant.

"DIP Closing Date" shall mean that date on which all of the conditions set forth in Section 6.01 have been satisfied or waived.

"DIP Closing Date Mortgaged Properties" shall have the meaning assigned to such term in the definition of the term "Mortgaged Properties".

"DIP Orders" shall mean the Interim Order and the Final Order.

"DIP Prepayment Event" means:

(i) any Disposition (including any Disposition of unencumbered (or partly unencumbered) assets of the Debtors that are subject to a superpriority claim in favor of the Administrative Agent (including, without limitation, any unencumbered portion of the equity of any Debtors' Foreign Subsidiaries) of any property or asset of any Debtor pursuant to Section 10.05(g);

(ii) any casualty or other insured damage to, or any taking under power of eminent domain or by condemnation or similar proceeding of, any property or asset of any Debtor with a fair value immediately prior to such event equal to or greater than $250,000; or

(iii) the incurrence by any Debtor of any Indebtedness, other than Indebtedness permitted under Section 10.01.

"DIP Term Budget Covenant" shall have the meaning specified in the Interim Order.

"DIP Term Commitment" shall mean, with respect to each DIP Term Lender, the commitment of such DIP Term Lender to make DIP Term Loans hereunder up to the amount set forth and opposite such DIP Term Lender's name on Schedule 2.01 as of the DIP Closing Date under the caption "DIP Term Commitment", as the same may be reduced or increased from time to time pursuant to assignments by or to such DIP Term Lender pursuant to Section 13.04. The aggregate amount of the DIP Term Lenders' DIP Term Commitments on the DIP Closing Date is $265,000,000.

"DIP Term Commitment Termination Date" shall mean the first Business Day following the Final Order Deadline.

"DIP Term Facility" shall mean the DIP Term Loans and/or the DIP Term Commitments of the DIP Term Lenders.

"DIP Term Loans" shall mean advances made pursuant to Article 2 hereof under the DIP Term Facility.

"DIP Term Loan Closing Date" shall mean the date of funding of the DIP Term Loans (other than the Interim DIP Term Loans) upon the satisfaction or waiver of the applicable conditions set forth in Section 6.02 and Section 6.03.

"DIP Term Lenders" shall mean, at any time, each Lender that has a DIP Term Commitment and/or DIP Term Loans at such time.

"DIP Term Lender Notice Office" shall mean the email address set forth in Schedule 13.03.

"DIP Term Obligations" shall mean all obligations of the Lead Borrower to pay DIP Term Loans and all interest, fees and charges payable hereunder, and all other payment obligations of the Lead Borrower

or any Guarantor arising under or in relation to any Loan Document, in each case with respect to the DIP Term Facility or owing to the DIP Term Lenders, whether now existing or hereafter arising, due or to become due, direct or indirect, absolute or contingent, and howsoever evidenced, held or acquired, and including all interest costs, fees, and charges after commencement of an insolvency proceeding regardless of whether allowed or allowable in whole or in part as a claim in such insolvency proceeding.

"Disclosure Exceptions" shall have the meaning assigned to such term in Section 9.04(i).

"Disinterested Director" shall mean, with respect to any person and transaction, a member of the Board of Directors of such person who does not have any material direct or indirect financial interest in or with respect to such transaction.

"Dispose" or "Disposed of" shall mean to convey, sell, lease, sell and lease-back, assign, farm-out, transfer or otherwise dispose of (other than, in each of the foregoing cases, for security purposes) any property, business or asset (including any disposition of any property, business or asset to a Delaware Divided LLC pursuant to a Delaware LLC Division). The term "Disposition" shall have a correlative meaning to the foregoing.

"Disqualified Stock" shall mean, with respect to any person, any Equity Interests of such person that, by its terms (or by the terms of any security or other Equity Interests into which it is convertible or for which it is exchangeable, in each case, at the option of the holder thereof), or upon the happening of any event or condition (a) matures or is mandatorily redeemable (other than solely for Qualified Equity Interests of the Lead Borrower), pursuant to a sinking fund obligation or otherwise, (b) is redeemable at the option of the holder thereof (other than solely for Qualified Equity Interests of the Lead Borrower), in whole or in part, or (c) is or becomes convertible into or exchangeable for Indebtedness or any other Equity Interests that would constitute Disqualified Stock, in the case of each of the foregoing clauses (a), (b) and (c), prior to the date that is ninety-one (91) days after the Maturity Date in effect at the time of issuance thereof and except as a result of a change of control or asset sale so long as any rights of the holders thereof upon the occurrence of a change of control or asset sale event shall be subject to the prior repayment (or offer to repay) in full of the Loans and all other Obligations that are accrued and payable and the termination of the Commitments (provided that only the portion of the Equity Interests that so mature or are mandatorily redeemable, are so convertible or exchangeable or are so redeemable at the option of the holder thereof prior to such date shall be deemed to be Disqualified Stock). Notwithstanding the foregoing: (i) any Equity Interests issued to any employee or to any plan for the benefit of employees of the Lead Borrower or the Subsidiaries or by any such plan to such employees shall not constitute Disqualified Stock solely because they may be required to be repurchased by the Lead Borrower in order to satisfy applicable statutory or regulatory obligations or as a result of such employee's termination, death or disability and (ii) any class of Equity Interests of such person that by its terms authorizes such person to satisfy its obligations thereunder by delivery of Equity Interests that are not Disqualified Stock shall not be deemed to be Disqualified Stock.

"Disregarded Entity" shall mean an entity that is disregarded as separate from its owner for U.S. federal income tax purposes.

"Dividend" shall mean, with respect to any Person, that such Person has paid a dividend, distribution or returned any equity capital to its stockholders, partners or members or authorized or made any other payment or delivery of property (other than common equity of such Person) to its stockholders, partners or members as such, or redeemed, retired, purchased or otherwise acquired, directly or indirectly, for a consideration any shares of any class of its capital stock or any partnership or membership interests outstanding on or after the DIP Closing Date (or any options or warrants issued by such Person with respect to its Equity Interests).

"Documentation Agent" shall mean U.S. Bank National Association, in its capacity as documentation agent for this Agreement.

"Dollar Equivalent" shall mean, at the time of determination thereof, (a) if such amount is expressed in U.S. Dollars, such amount, (b) if such amount is expressed in an Alternative Currency, the equivalent of such amount in U.S. Dollars determined by using the rate of exchange for the purchase of the U.S. Dollars with the Alternative Currency in the London foreign exchange market at or about 11:00 a.m. London time (or New York time, as applicable) on a particular day as displayed by ICE Data Services as the "ask price", or as displayed on such other information service which publishes that rate of exchange from time to time in place of ICE Data Services (or if such service ceases to be available, the equivalent of such amount in U.S. Dollars as reasonably determined by the Administrative Agent using any method of determination it deems reasonably appropriate) and (c) if such amount is denominated in any other currency, the equivalent of such amount in U.S. Dollars as reasonably determined by the Administrative Agent using any reasonable method of determination it deems reasonably appropriate.

"Dominion Account" shall mean a special concentration account established by the Lead Borrower in the United States, at JPMCB, an affiliate thereof, another Revolving Lender or any affiliate or branch thereof, over which the Administrative Agent has exclusive control for withdrawal purposes pursuant to the terms and provisions of this Agreement and the other Loan Documents.

"Dutch Collateral" shall mean all property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) pursuant to any Dutch Security Document (including any Additional Security Documents) or will be granted in accordance with requirements set forth in Section 9.12, including, without limitation, all collateral as described in the Dutch Movables Pledge. For the avoidance of doubt, in no event shall Dutch Collateral include Excluded Property.

"Dutch Movables Pledge" shall mean the Dutch law governed pledge of movables assets entered into on or about the date of this Agreement by and among the Swiss Borrower, as pledgor, and the Collateral Agent, as pledgee.

"Dutch Security Documents" shall mean the Dutch Movables Pledge and, after the execution and delivery thereof, each Additional Security Document governed by Dutch law, together with any other applicable security documents governed by Dutch law from time to time in favor of the Collateral Agent for the benefit of the Secured Parties.

"EEA Financial Institution" shall mean (a) any credit institution or investment firm established in any EEA Member Country which is subject to the supervision of an EEA Resolution Authority, (b) any entity established in an EEA Member Country which is a parent of an institution described in clause (a) of this definition, or (c) any financial institution established in an EEA Member Country which is a subsidiary of an institution described in clauses (a) or (b) of this definition and is subject to consolidated supervision with its parent.

"EEA Member Country" shall mean any of the member states of the European Union, Iceland, Liechtenstein, and Norway.

"EEA Resolution Authority" shall mean any public administrative authority or any Person entrusted with public administrative authority of any EEA Member Country (including any delegee) having responsibility for the resolution of any EEA Financial Institution.

"Electronic Signature" means an electronic sound, symbol, or process attached to, or associated with, a contract or other record and adopted by a Person with the intent to sign, authenticate or accept such contract or record.

"Eligible Accounts" shall mean, on any date of determination of any Borrowing Base, all of the Accounts owned by all applicable Loan Parties and reflected in the most recent Borrowing Base Certificate delivered by the Lead Borrower to the Administrative Agent, except any Account to which any of the exclusionary criteria set forth below applies. In addition, the Administrative Agent reserves the right, at any time and from time to time after the DIP Closing Date, to adjust on no less than three (3) Business Days' prior written notice to the Lead Borrower (unless the exigencies of the circumstance are such that such additional notice cannot be given, in which case the Administrative Agent shall provide written notice to the Lead Borrower substantially concurrently with such change or as expeditiously thereafter as commercially practicable) any of the criteria set forth below, to establish new criteria with respect to Eligible Accounts and to adjust the advance rates, in each case, in its Permitted Discretion, subject to the approval of the Supermajority Lenders, as the case may be, in the case of adjustments, new criteria or increases in advance rates which, in each case, have the effect of making more credit available than would have been available if the standards in effect on the DIP Closing Date had continued to be in effect. Eligible Accounts shall not include any of the following Accounts:

(i) any Account in which the Collateral Agent, on behalf of the Secured Parties, does not have a valid and enforceable first priority (subject to (x) Permitted Borrowing Base Liens which do not have priority over the Lien in favor of the Collateral Agent or (y) any other Permitted Lien for which the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Permitted Lien (including, without limitation, Liens securing the NMTC Financing, to the extent of the NMTC Reserve)) perfected (or equivalent in any foreign jurisdiction) Lien governed by the laws of each applicable jurisdiction or any Account that is subject to any other Lien of any nature whatsoever (except as set forth in the first parenthetical of this clause (i));

(ii) any Account that is not owned by a Loan Party;

(iii) any Account due from (A) an Account Debtor that is not domiciled in the United States, Canada, an Eligible Asian Jurisdiction or an Eligible European Jurisdiction and (if not a natural person) organized or incorporated under the laws of the United States, Canada, an Eligible Asian Jurisdiction or an Eligible European Jurisdiction, (B) with respect to the Australian Borrowing Base, an Account Debtor that is not domiciled in an Eligible Asian Jurisdiction and (if not a natural person) organized or incorporated under the laws of Eligible Asian Jurisdiction or (C) with respect to the Swiss Borrowing Base, an Account Debtor that is not domiciled in an Eligible European Jurisdiction or the United States and (if not a natural person) organized or incorporated under the laws of Eligible European Jurisdiction or the United States, unless, in each case, such Account is backed by credit insurance satisfactory to the Administrative Agent or a letter of credit acceptable to the Administrative Agent which is in the possession of, is directly drawable by the Administrative Agent and with respect to which the Administrative Agent has "control" as defined in Section 9-107 of the UCC; provided that (x) so long as Husqvarna AB has an Investment Grade Rating, any Account in respect of which such Person (or its subsidiaries) is an Account Debtor shall not be excluded from "Eligible Accounts" pursuant to this clause and (y) up to $12,500,000 of Accounts in respect of which Ningbo Daye Machinery Co. (or its subsidiaries) is an Account Debtor shall not be excluded from "Eligible Accounts" pursuant to this clause;

(iv) any Account that is payable in any currency other than U.S. Dollars, Australian Dollars, Canadian Dollars, Pound Sterling, Euros or Swiss Francs;

(v) any Account that does not arise from the sale of goods or the performance of services by such Loan Party in the ordinary course of its business;

(vi) any Account that does not comply in all material respects with all applicable legal requirements, including, without limitation, all laws, rules, regulations and orders of any relevant Governmental Authority;

(vii) any Account (A) as to which a Loan Party's right to receive payment is contingent upon the fulfillment of any condition whatsoever unless such condition is satisfied, (B) as to which a Loan Party is not able to bring suit or otherwise enforce its remedies against the Account Debtor through judicial or administrative process, (C) that represents a progress or milestone billing consisting of an invoice for goods sold or used or services rendered pursuant to a contract under which the Account Debtor's obligation to pay that invoice is subject to a Loan Party's completion of further performance under such contract or is subject to the equitable lien of a surety bond issuer or (D) that arises with respect to goods that are delivered on a bill-and-hold, cash-on-delivery basis or placed on consignment, guaranteed sale or other terms by reason of which the payment by the Account Debtor is or may be conditional;

(viii) to the extent that any defense, counterclaim or dispute arises, or any accrued rebate or sales commission payable exists or is owed, or the Account is, or is reasonably likely to become, subject to any right of recoupment, chargeback or set-off by the Account Debtor, for customer deposits or otherwise, to the extent of the amount of such dispute, defense, counterclaim, rebate, sales commission, recoupment, chargeback or set-off, it being understood that the remaining balance of the Account shall be eligible;

(ix) any Account that is subject to any netting or similar arrangement;

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

(xi) any Account with respect to which an invoice or other electronic transmission constituting a request for payment, reasonably acceptable to the Administrative Agent in form and substance (it being acknowledged and agreed that the Loan Parties' manner of invoicing and/or requesting payment as of the DIP Closing Date is so acceptable to the Administrative Agent), has not been sent on a timely basis to the applicable Account Debtor according to the normal invoicing and timing procedures of the Loan Parties or that represents a partial payment on a delivered invoice;

(xii) any Account that arises from a sale to any director, officer, other employee or Affiliate of a Loan Party; provided that up to $5,000,000 of Accounts with respect to which Power Distributors, LLC is the Account Debtor shall not be deemed ineligible by virtue of this clause (xii);

(xiii) any Account that is in default; provided that, without limiting the generality of the foregoing, an Account shall be deemed in default at any time upon the occurrence of any of the following; provided further, that, in calculating delinquent portions of Accounts under clause (xiii)(A)(x) below, credit balances will be excluded:

(A) such Account (x) is not paid and more than one-hundred twenty (120) days after the date of the original invoice therefor have elapsed, (y) such Account has dated terms of more than one-hundred twenty (120) days from the invoice date or (z) such Account has been written off the books of the Loan Parties or otherwise designated as uncollectible or has been sent to a collection agency; or

(B) the Account Debtor obligated upon such Account suspends business, makes a general assignment for the benefit of creditors, fails to pay its debts generally as they come due, or is classified by the Lead Borrower and its Subsidiaries as "cash only, bad check," as determined by the Lead Borrower and its Subsidiaries in the ordinary course of business consistent with past-practice; or

(C) a petition or other proceeding is filed by or against any Account Debtor obligated upon such Account under any Debtor Relief Law; provided that so long as an order exists permitting payment of trade creditors specifically with respect to such Account Debtor and such Account Debtor has obtained adequate post-petition financing to pay such Accounts, the Accounts of such Account Debtor shall not be deemed ineligible under the provisions of this clause (C) to the extent the order permitting such financing allows the payment of the applicable Account;

(xiv) any Account that is the obligation of an Account Debtor (other than an individual) if 50% or more of the Dollar Equivalent of all Accounts owing by such Account Debtor are ineligible under the criteria set forth in clause (xiii) above;

(xv) any Account as to which any of the representations or warranties in the Loan Documents are untrue in any material respect (to the extent such materiality relates to the amount owing on such Account);

(xvi) any Account which is evidenced by a judgment, Instrument (as defined in the applicable Security Document) or Chattel Paper (as defined in the applicable Security Document) and such Instrument or Chattel Paper is not pledged and delivered to the Administrative Agent in accordance with the Security Documents;

(xvii) any Account on which the Account Debtor is a Governmental Authority, unless the applicable Loan Party has assigned its rights to payment of such Account to the Administrative Agent pursuant to the Assignment of Claims Act of 1940, as amended, in the case of a U.S. federal Governmental Authority, and pursuant to applicable law, if any, in the case of any other Governmental Authority, and such assignment has been accepted and acknowledged by the appropriate government officers to the extent required under such law for a valid assignment of such Account;

(xviii) any Account arising on account of a supplier rebate, unless the Loan Parties have received a waiver of offset from the supplier in form and substance reasonably satisfactory to the Administrative Agent;

(xix) any Account which is owing by an Account Debtor to the extent the aggregate amount of Accounts owing from such Account Debtor and its Affiliates to the Loan Parties exceeds, in the case of (A) an Account Debtor with an Investment Grade Rating, 25% of the aggregate Eligible Accounts of all Loan Parties, (B) in the case of an Account Debtor that does not have an Investment Grade Rating, 15% of the aggregate Eligible Accounts of all Loan Parties and (C) in the case of an Account Debtor listed on Schedule 1.01(A), the percentage set forth on such schedule opposite such Account Debtor's name (which Schedule 1.01(A) may be updated from time to time solely with the consent of the Administrative Agent, such consent to be granted or withheld in its Permitted Discretion, and the Lead Borrower) of the aggregate Eligible Accounts of all Loan Parties;

(xx) any Account which the goods giving rise to such Account have not been shipped to the Account Debtor (or which is accounted for as deferred revenue following the shipment thereof until the risk

of loss has passed to the Account Debtor) or for which the services giving rise to such Account have not been performed by such Loan Party;

(xxi) any Account which is owing in respect of interest and late charges or fees in respect of Indebtedness;

(xxii) any Account which is acquired by a Loan Party after the DIP Closing Date in an acquisition or other bulk purchase of assets (other than from another Loan Party) and would constitute, taken together with all other assets acquired in such acquisition or bulk purchase after the DIP Closing Date and to become eligible pursuant to this clause (xxii) or clause (xii) of the definition of "Eligible Inventory," more than 15% of the applicable Borrowing Base, unless and until such time as the Administrative Agent shall have received or conducted a field examination, from an examiner reasonably satisfactory to the Administrative Agent, of such Accounts acquired in such acquisition or other bulk purchase of assets and such other customary due diligence as the Administrative Agent may reasonably require in its Permitted Discretion in order to determine the appropriate Reserves against such Accounts, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent (the receipt or completion of such field examination and completion of such due diligence, with results reasonably satisfactory to the Administrative Agent, are collectively referred to herein as the "Applicable Account Diligence"); provided that, notwithstanding the foregoing provisions of this clause (xxii), if the Applicable Account Diligence has not been completed with respect to any such acquired or purchased Account within ninety (90) days following such acquisition or purchase, such Account shall not constitute an "Eligible Account";

(xxiii) any Account as to which the contract or agreement underlying such Account is governed by (or, if no governing law is expressed therein, is deemed to be governed by) the laws of any jurisdiction other than (A) in the case of the U.S. Borrowing Base, the United States, any state thereof, Canada, any province or territory thereof, the District of Columbia, any Eligible Asian Jurisdiction or any Eligible European Jurisdiction, (B) in the case of the Australian Borrowing Base, any Eligible Asian Jurisdiction, (C) in the case of the Swiss Borrowing Base, any Eligible European Jurisdiction or (D) such other jurisdiction as may be consented to by the Administrative Agent in its Permitted Discretion (such consent not to be unreasonably withheld, delayed or conditioned); provided that up to $12,500,000 of Accounts in respect of which Ningbo Daye Machinery Co. (or its subsidiaries) is an Account Debtor shall not be excluded from "Eligible Accounts" pursuant to this clause, so long as the contract or agreement underlying such Account is governed by the laws of the United States, any state thereof or the District of Columbia or Germany;

(xxiv) any Account which is subject to any limitation on assignment or other restriction (whether arising by operation of law, by agreement or otherwise) which would, under the local governing law of the contract creating such Account, have the effect of restricting the assignment for or by way of security or the creation of security over such Account generally, in each case unless the Administrative Agent has reasonably determined that such limitation is not enforceable. Each Loan Party shall use its reasonable endeavors to remove any such restrictions from the underlying contracts evidencing its Accounts or to obtain consents to the granting of security over the Accounts from the relevant Account Debtors;

(xxv) any Account which is excluded from the scope of any Security Document by virtue of the definition of "Excluded Property" (or equivalent terminology in any such Security Document);

(xxvi) any Account (A) the contract or related documentation (such as invoices or purchase orders) for which contains extended or extendible retention of title rights in favor of the vendor or supplier thereof or (B) on which, under applicable governing laws, extended or extendible retention of title may be imposed unilaterally by the vendor or supplier thereof;

(xxvii) any Account that is accounted for as deferred revenue, including Accounts arising under extended warranty contracts;

(xxviii) any Account arising under a contract for which a Loan Party has posted a performance bond, up to the bond amount;

(xxix) any Account that is represented in the accounting of any Loan Party as unapplied cash, unreconciled difference, debit memos or credit memos, customer returns, adjustments or customer reserves;

(xxx) any Account due from an Account Debtor that is a Sanctioned Person; or

(xxxi) any Account arising out of public procurement contracts.

"Eligible Asian Jurisdiction" shall mean any of Australia, Singapore, Hong Kong and New Zealand.

"Eligible Equipment" shall mean, on any date of determination of any Borrowing Base, all of the Equipment owned by all applicable Loan Parties and reflected in the most recent Borrowing Base Certificate delivered by the Lead Borrower to the Administrative Agent, except any Equipment that does not meet the criteria set forth below. In addition, the Administrative Agent reserves the right, at any time and from time to time after the DIP Closing Date, to adjust on no less than three (3) Business Days' prior written notice to the Lead Borrower (unless the exigencies of the circumstance are such that such advance notice cannot be given, in which case the Administrative Agent shall provide written notice to the Lead Borrower substantially concurrently with such change or as expeditiously thereafter as commercially practicable) any of the criteria set forth below, to establish new criteria with respect to Eligible Equipment and to adjust the advance rates, in each case, in its Permitted Discretion, subject to the approval of the Supermajority Lenders, as the case may be, in the case of adjustments, new criteria or increases in advance rates which, in each case, have the effect of making more credit available than would have been available if the standards in effect on the DIP Closing Date had continued to be in effect. Eligible Equipment shall not include any Equipment of a Loan Party that does not meet each of the following requirements:

(i) an appraisal report has been delivered to the Administrative Agent in form, scope and substance reasonably satisfactory to the Administrative Agent;

(ii) such Loan Party has good title to such Equipment;

(iii) such Equipment is subject to a first priority perfected Lien (subject to (x) Permitted Borrowing Base Liens which do not have priority over the Lien in favor of the Collateral Agent or (y) any other Permitted Lien for which the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Permitted Lien (including, without limitation, Liens securing the NMTC Financing, to the extent of the NMTC Reserve)) in favor of the Collateral Agent, for the benefit of the Secured Parties, governed by the laws of each applicable jurisdiction and is free and clear of all other Liens of any nature whatsoever (except as set forth in the immediately preceding parenthetical);

(iv) the full purchase price for such Equipment has been paid by such Loan Party;

(v) such Equipment is located on premises (A) owned by such Loan Party, which premises are subject to a first priority perfected Lien (subject to Permitted Liens) in favor of the Administrative Agent, unless (x) such Loan Party shall have delivered to the Administrative Agent a mortgage waiver in form and substance reasonably satisfactory to the Administrative Agent or (y) such premises are owned by such Loan Party in fee title free and clear of any Liens (other than Permitted Liens), or (B) leased by such Loan Party

where (x) the lessor has delivered to the Administrative Agent a collateral access agreement or (y) a Reserve for rent, charges, and other amounts due or to become due with respect to such facility has been established by the Administrative Agent in its Permitted Discretion;

(vi) such Equipment is in good working order and condition (ordinary wear and tear excepted) and is used or held for use by such Loan Party in the ordinary course of business of such Loan Party;

(vii) except for the Loan Documents and documentation governing other Indebtedness permitted by this Agreement, such Equipment is not subject to any agreement which materially restricts the ability of such Loan Party to use, sell, transport or dispose of such Equipment or which restricts the Administrative Agent's ability to take possession of, sell or otherwise dispose of such Equipment;

(viii) such Equipment does not constitute "Fixtures" under the applicable laws of the jurisdiction in which such Equipment is located; and

(ix) such Equipment does not constitute Equipment located in the Netherlands on the premises of such Loan Party subject to or liable for Taxes imposed by the Netherlands and that is to be considered a movable asset apparently intended to durably serve such premises (for purposes of Sections 22(3) and 22bis of the Dutch 1990 Tax Collection Act (Invorderingswet 1990).

"Eligible European Jurisdiction" shall mean any of the United Kingdom, Belgium, France, Germany, Ireland, Italy, Netherlands, Spain, Switzerland, Norway, Denmark, Sweden, Finland, Austria, Portugal and Luxembourg.

"Eligible In-Transit Inventory" shall mean Inventory in an aggregate amount not to exceed $15,000,000 that is owned by a U.S. Loan Party or an Australian Loan Party that would meet all of the criteria of "Eligible Inventory" if it were not in transit (solely to a location in the U.S. or Australia that would otherwise be acceptable pursuant to the other clauses of this definition). In addition, no Inventory shall be Eligible In-Transit Inventory unless (a) it is subject to a negotiable document of title, showing the Administrative Agent (or, with the consent of the Administrative Agent in its Permitted Discretion, the applicable U.S. Loan Party or Australian Loan Party) as consignee and the Administrative Agent has control over such documents of title (including by delivery of customs broker or freight forwarder agreements in a form and substance reasonably acceptable to the Administrative Agent); (b) such Inventory is insured in accordance with the provisions of this Agreement and the other Loan Documents, including, without limitation, to the extent applicable, marine cargo insurance; (c) such Inventory has been identified to the applicable sales contract and title has passed to the applicable U.S. Loan Party or Australian Loan Party; (d) such Inventory is not sold by a vendor that has a right to reclaim, divert shipment of, repossess, stop delivery, claim any reservation of title or otherwise assert Lien rights against the Inventory; (e) such Inventory is shipped by a common carrier that is not affiliated with the vendor and has not been acquired from a Person that is (x) currently the subject or target of any Sanctions or (y) a Sanctioned Person; (f) it is being handled by a customs broker, freight-forwarder or other handler that has delivered a customary lien waiver; and (g) such Inventory is in transit for sixty (60) or fewer total consecutive days.

"Eligible Inventory" shall mean, subject to adjustment as set forth below, items of Inventory of any applicable Loan Party held for sale in the ordinary course. Eligible Inventory shall exclude any Inventory to which any of the exclusionary criteria set forth below apply. The Administrative Agent shall have the right to establish, modify or eliminate Reserves against Eligible Inventory from time to time in its Permitted Discretion (subject to the terms and conditions of the definition of "Reserves"). In addition, the Administrative Agent reserves the right, at any time and from time to time after the DIP Closing Date, to adjust on no less than three (3) Business Days' prior written notice to the Lead Borrower (unless the exigencies of the circumstance are such that such advance notice cannot be given, in which case the

Administrative Agent shall provide written notice to the Lead Borrower substantially concurrently with such change or as expeditiously thereafter as commercially practicable) any of the criteria set forth below, to establish new criteria with respect to Eligible Inventory and to adjust advance rates, in each case, in its Permitted Discretion, subject to the approval of the Supermajority Lenders, in the case of adjustments, new criteria or increases in the advance rates, in each case, which have the effect of making more credit available than would have been available if the standards in effect on the DIP Closing Date had continued to be in effect. Eligible Inventory shall not include any Inventory of the Loan Parties that:

(i) is not solely owned by a Loan Party (or a combination of Loan Parties), or is leased by or is on consignment to a Loan Party, or the Loan Parties do not have title thereto (it being understood that the existence of any retention of title rights of the types described in clause (xv) below shall not cause ineligibility under this clause (i), but shall be subject to such clause (xv));

(ii) the Collateral Agent, on behalf of the Secured Parties, does not have a valid and enforceable first priority (subject to (x) Permitted Borrowing Base Liens which do not have priority over the Lien in favor of the Collateral Agent or (y) any other Permitted Lien for which the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Permitted Lien (including, without limitation, Liens securing the NMTC Financing, to the extent of the NMTC Reserve)) perfected (or equivalent in any foreign jurisdiction) Lien in respect of such Inventory governed by the laws of each applicable jurisdiction or that is subject to any other Lien of any nature whatsoever (except as set forth in the immediately preceding parenthetical); provided that the existence of any retention of title rights of the types described in clause (xv) below shall not cause ineligibility under this clause (ii), but shall be subject to such clause (xv);

(iii) (A) is stored at a location leased by a Loan Party unless (x) the Administrative Agent has given its prior consent thereto, (y) a reasonably satisfactory Landlord Lien Waiver and Access Agreement has been delivered to the Administrative Agent or (z) Landlord Lien Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto, or (B) is stored with a bailee or warehouseman unless either (x) a reasonably satisfactory acknowledged bailee waiver letter has been received by the Administrative Agent or (y) Landlord Lien Reserves reasonably satisfactory to the Administrative Agent have been established with respect thereto;

(iv) (A) is placed on consignment, unless a valid consignment agreement which is reasonably satisfactory to the Administrative Agent is in place with respect to such Inventory or (B) is in transit (except Eligible In-Transit Inventory);

(v) is covered by a negotiable document of title, unless such document has been delivered to the Administrative Agent with all necessary endorsements, free and clear of all Liens except Liens in favor of landlords, carriers, bailees and warehousemen if clause (iii) above has been complied with;

(vi) is unsalable, shopworn, seconds, damaged, obsolete, distressed, has been written off or is unfit for sale, in each case, as determined in the ordinary course of business by the Loan Parties;

(vii) consists of display items or packing or shipping materials or manufacturing supplies;

(viii) is not of a type generally held for sale in the ordinary course of the Loan Parties', as applicable, business;

(ix) except as otherwise agreed by the Administrative Agent, does not conform in all material respects to the representations or warranties pertaining to Inventory set forth in the Loan Documents;

(x) is subject to any licensing arrangement or any other Intellectual Property or other proprietary rights of any Person, the effect of which would be to limit the ability of the Administrative Agent, or any Person selling the Inventory on behalf of the Administrative Agent, to sell such Inventory in enforcement of the Administrative Agent's Liens without further consent or payment to the licensor or such other Person (unless such consent has then been obtained);

(xi) is not covered by casualty insurance maintained as required by Section 9.02;

(xii) is acquired by a Loan Party after the DIP Closing Date in an acquisition or other bulk purchase of assets (other than from another Loan Party) and would constitute, taken together with all other assets acquired in such acquisition or bulk purchase after the DIP Closing Date and to become eligible pursuant to this clause (xii) or clause (xxii) of the definition of "Eligible Accounts," more than 15% of the Aggregate Borrowing Base, unless and until such time as the Administrative Agent shall have received or conducted an appraisal, from an appraiser reasonably satisfactory to the Administrative Agent, of such Inventory acquired in such acquisition or other bulk purchase of assets and such other customary due diligence as the Administrative Agent may reasonably require in its Permitted Discretion order to determine the appropriate Reserves against such Inventory, all of the results of the foregoing to be reasonably satisfactory to the Administrative Agent (the receipt or completion of such appraisal and completion of such due diligence, with results reasonably satisfactory to the Administrative Agent, are collectively referred to herein as the "Applicable Inventory Diligence"); provided that, notwithstanding the foregoing provisions of this clause (xii), (A) if the Applicable Inventory Diligence has not been completed with respect to any such acquired or purchased Inventory within ninety (90) days following such acquisition or purchase, such Inventory shall not constitute "Eligible Inventory" and (B) prior to the completion of the Applicable Inventory Diligence with respect to any Inventory that otherwise constituted "Eligible Inventory," such Inventory shall be included in the "U.S. Borrowing Base," the "Australian Borrowing Base" or the "Swiss Borrowing Base," as applicable, pursuant to clause (b)(i) of the definition thereof (without giving effect to clause (b)(ii) thereof);

(xiii) is located at any location where the aggregate value of all Eligible Inventory of the Loan Parties at such location is less than $100,000;

(xiv) is Inventory of another type deemed ineligible per the initial inventory appraisal;

(xv) is Inventory in relation to which (i) any contract or related documentation (such as invoices or purchase orders) relating to such Inventory includes retention of title rights in favor of the vendor or supplier thereof, or (ii) under applicable governing laws, retention of title may be imposed unilaterally by the vendor or supplier thereof; provided that Inventory which may be subject to any rights of retention of title shall not be excluded from Eligible Inventory solely pursuant to this sub-paragraph (xv) in the event that (A) the Administrative Agent shall have received evidence satisfactory to it that the full purchase price of such Inventory has, or will have, been paid prior, or upon the delivery of, such Inventory to the relevant Loan Party or (B) a Letter of Credit has been issued under and in accordance with the terms of this Agreement for the purchase of such Inventory;

(xvi) is stored at a location not in the United States, Canada, the Netherlands or Australia;

(xvii) has been returned by a customer or is in the process of being reworked or retooled;

(xviii) is not finished goods, work-in-process or raw materials or which constitutes spare or replacement parts, subassemblies, packaging and shipping material, manufacturing supplies, samples, prototypes, displays or display items, bill-and-hold or ship-in-place goods, goods that are returned or

marked for return, repossessed goods, defective or damaged goods, goods held on consignment, or goods which are not of a type held for sale in the ordinary course of business;

(xix) is held for use by an outside processor or subcontractor;

(xx) is of a type generally sold and delivered by the Loan Parties on a "drop-ship" basis;

(xxi) is represented in the accounting of any Loan Party as inventory adjustment, variance, reclassification, warranty reserve, write-off, inventory valuation or unreconciled difference; or

(xxii) has been acquired from any Sanctioned Person.

"Eligible Real Property" shall mean, on any date of determination of any Borrowing Base, the Real Property of any Loan Party that satisfies the eligibility criteria set forth below. In addition, the Administrative Agent reserves the right, at any time and from time to time after the DIP Closing Date, to adjust on no less than three (3) Business Days' prior written notice to the Lead Borrower (unless the exigencies of the circumstance are such that such advance notice cannot be given, in which case the Administrative Agent shall provide written notice to the Lead Borrower substantially concurrently with such change or as expeditiously thereafter as commercially practicable) the criteria set forth below, to establish new criteria with respect to Eligible Real Property and to adjust the advance rates, in each case, in its Permitted Discretion, subject to the approval of the Supermajority Lenders, as the case may be, in the case of adjustments, new criteria or increases in advance rates which, in each case, have the effect of making more credit available than would have been available if the standards in effect on the DIP Closing Date had continued to be in effect. Eligible Real Property shall not include any Real Property of a Loan Party that does not meet each of the following requirements:

(i) to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, an appraisal report has been delivered to the Administrative Agent in form, scope and substance reasonably satisfactory to the Administrative Agent;

(ii) to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, evidence of zoning compliance has been delivered to the Administrative Agent in the form of an industry standard zoning report issued by a reputable national provider of zoning services or other form of report reasonably acceptable to the Administrative Agent;

(iii) the Administrative Agent is reasonably satisfied that all actions necessary or desirable (including, without limitation, the filing and recording of Mortgages) in order to create a perfected first priority Lien (subject to (x) Permitted Borrowing Base Liens which do not have priority over the Lien in favor of the Collateral Agent or (y) any other Permitted Lien for which the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Permitted Lien (including, without limitation, Liens securing the NMTC Financing, to the extent of the NMTC Reserve)) in favor of the Collateral Agent, on behalf of the Secured Parties, on such Real Property have been taken under the laws of each applicable jurisdiction and such Real Property is free and clear of all other Liens of any nature whatsoever (except as set forth in the immediately preceding parenthetical);

(iv) it is adequately protected by a Mortgage or the applicable Mortgage has been delivered to the title company for recordation;

(v) to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, a Phase I Environmental Assessment has been completed and delivered;

(vi) to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, an ALTA Survey has been delivered for which all necessary fees have been paid;

(vii) to the extent reasonably required by the Administrative Agent, (A) a local counsel opinion has been delivered and (B) the applicable Loan Party shall have obtained (to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent) (i) estoppel certificates and subordination agreements executed by all material tenants of such Real Property and (ii) such other consents, agreements and confirmations of lessors and third parties as the Administrative Agent may reasonably deem necessary or desirable, together with evidence that all other actions that the Administrative Agent may reasonably deem necessary or desirable in order to create perfected first priority Liens (subject to Permitted Liens) on the property described in the Mortgages have been taken;

(viii) to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, the Administrative Agent shall have received all Flood Documentation;

(ix) such Real Property is a Borrowing Base Real Property located in the United States; and

(x) to the extent reasonably requested and requested at a commercially reasonable time, the Administrative Agent shall have received such other reports, mortgage tax affidavits and declarations and other similar information and related certifications as are usual and customary for similar credit facilities and in form and substance reasonably acceptable to the Administrative Agent.

"Eligible Trademarks" shall mean, on any date of determination of any Borrowing Base, all of the Trademarks owned by all applicable Loan Parties and reflected in the most recent Borrowing Base Certificate delivered by the Lead Borrower to the Administrative Agent, except any Trademark that does not meet the criteria set forth below. In addition, the Administrative Agent reserves the right, at any time and from time to time after the DIP Closing Date, to adjust on no less than three (3) Business Days' prior written notice to the Lead Borrower (unless the exigencies of the circumstance are such that such advance notice cannot be given, in which case the Administrative Agent shall provide written notice to the Lead Borrower substantially concurrently with such change or as expeditiously thereafter as commercially practicable) any of the criteria set forth below, to establish new criteria with respect to Eligible Trademark and to adjust the advance rates, in each case, in its Permitted Discretion, subject to the approval of the Supermajority Lenders, as the case may be, in the case of adjustments, new criteria or increases in advance rates which, in each case, have the effect of making more credit available than would have been available if the standards in effect on the DIP Closing Date had continued to be in effect. Eligible Trademark shall not include any Trademark of a Loan Party that does not meet each of the following requirements:

(i) to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, an appraisal report has been delivered to the Administrative Agent in form, scope and substance reasonably satisfactory to the Administrative Agent;

(ii) such Loan Party has good title to such Trademark; and

(iii) such Trademark is subject to a first priority perfected (or the equivalent thereof in any foreign jurisdiction) Lien (subject to (x) Permitted Borrowing Base Liens which do not have priority over the Lien in favor of the Collateral Agent or (y) any other Permitted Lien for which the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Permitted Lien) in favor of the Collateral Agent, on behalf of the Secured Parties, governed by the laws of each applicable jurisdiction and is free and clear of all other Liens of any nature whatsoever (except as set forth in the immediately preceding parenthetical).

"Eligible Transferee" shall mean and include any existing Lender, any Approved Fund or any commercial bank, an insurance company, a finance company, a financial institution, any fund that invests in loans or any other "accredited investor" (as defined in Regulation D of the Securities Act) but in any event excluding (i) any natural person or any holding company, investment vehicle or trust for, or owned and operated for the primary benefit of, a natural person, (ii) a Defaulting Lender or its subsidiaries, and (iii) each Borrower and its respective subsidiaries and Affiliates.

"Environment" shall mean ambient and indoor air, surface water and groundwater (including potable water, navigable water and wetlands), the land surface or subsurface strata, natural resources such as flora and fauna or as otherwise defined in any Environmental Law.

"Environmental Claims" shall mean any and all administrative, regulatory or judicial actions, suits, demands, demand letters, directives, claims, liens, notices of noncompliance or violation, investigations and/or proceedings relating in any way to any Environmental Law or any permit issued, or any approval given, under any such Environmental Law, including, without limitation, (a) any and all Environmental Claims by governmental or regulatory authorities for enforcement, investigation, cleanup, removal, response, remedial or other actions or damages pursuant to any applicable Environmental Law, and (b) any and all Environmental Claims by any third party seeking damages, contribution, indemnification, cost recovery, compensation or injunctive relief arising out of or relating to an alleged injury or threat of injury to human health, safety or the Environment, in each case due to the presence of Hazardous Materials, including any Release or threat of Release of any Hazardous Materials.

"Environmental Laws" shall mean all applicable laws (including common law), rules, regulations, codes, ordinances, orders, binding agreements, technical standards, decrees or judgments, promulgated or entered into by or with any Governmental Authority, relating in any way to the Environment, preservation or reclamation of natural resources, any Hazardous Materials or to public or employee health and safety matters (to the extent relating to the Environment or Hazardous Materials).

"Environmental Permits" shall have the meaning assigned to such term in Section 8.16.

"Equipment" shall mean all "equipment", as such term is defined in the UCC as in effect on the date hereof in the State of New York or, if applicable, in the Canadian PPSA, wherever located, in which any Person now or hereafter has rights.

"Equipment Amortization Factor" shall mean, with respect to any Equipment on any date of determination, 1 minus a fraction, the numerator of which is the number of full fiscal quarters of the Lead Borrower elapsed as of such date (including any such fiscal quarter ending on such date) since December 31, 2019 (or, if later, the date of the Administrative Agent's receipt of the results of the most recent completed appraisal of such Equipment conducted pursuant to Section 9.07) and the denominator of which is 28.

"Equity Interests" of any person shall mean any and all shares, interests, equity quotas, rights to purchase or otherwise acquire, warrants, options, participations or other equivalents of or interests in (however designated) equity or ownership of such person, including any preferred stock (including any preferred equity certificates (and any other similar instruments)), any limited or general partnership interest and any limited liability company membership interest, and any securities or other rights or interests convertible into or exchangeable for any of the foregoing.

"ERISA" shall mean the Employee Retirement Income Security Act of 1974, as the same may be amended from time to time and any final regulations promulgated and the rulings issued thereunder.

"ERISA Affiliate" shall mean any trade or business (whether or not incorporated) that, together with the Lead Borrower, any other Borrower or any Subsidiary, is treated as a single employer under Section 414(b) or (c) of the Code, or, solely for purposes of Section 302 of ERISA and Section 412 of the Code, is treated as a single employer under Section 414 of the Code.

"ERISA Event" shall mean (a) any Reportable Event or the requirements of Section 4043(b) of ERISA apply with respect to a Plan; (b) with respect to any Plan, the failure to satisfy the minimum funding standard under Section 412 of the Code or Section 302 of ERISA, whether or not waived; (c) a determination that any Plan is, or is expected to be, in "at-risk" status (as defined in Section 303(i)(4) of ERISA or Section 430(i)(4) of the Code); (d) the filing pursuant to Section 412(c) of the Code or Section 302(c) of ERISA of an application for a waiver of the minimum funding standard with respect to any Plan, the failure to make by its due date a required installment under Section 430(j) of the Code with respect to any Plan or the failure to make by its due date any required contribution to a Multiemployer Plan; (e) the incurrence by the Lead Borrower, any other Borrower, a Subsidiary or any ERISA Affiliate of any liability under Title IV of ERISA with respect to the termination of any Plan or Multiemployer Plan; (f) the receipt by the Lead Borrower, any other Borrower, a Subsidiary or any ERISA Affiliate from the PBGC or a plan administrator of any notice relating to an intention to terminate any Plan or to appoint a trustee to administer any Plan; (g) the incurrence by the Lead Borrower, any other Borrower, a Subsidiary or any ERISA Affiliate of any liability with respect to the withdrawal or partial withdrawal from any Plan or Multiemployer Plan; (h) the receipt by the Lead Borrower, any other Borrower, a Subsidiary or any ERISA Affiliate of any notice, or the receipt by any Multiemployer Plan from the Lead Borrower, any other Borrower, any Subsidiary or any ERISA Affiliate of any notice, concerning the impending imposition of Withdrawal Liability or a determination that a Multiemployer Plan is, or is expected to be, insolvent or in reorganization, within the meaning of Title IV of ERISA, or in "endangered" or "critical" status, within the meaning of Section 432 of the Code or Section 305 of ERISA; (i) the conditions for imposition of a lien under Section 303(k) of ERISA shall have been met with respect to any Plan; or (j) the withdrawal of any of the Lead Borrower, any other Borrower, a Subsidiary or any ERISA Affiliate from a Plan subject to Section 4063 of ERISA during a plan year in which such entity was a "substantial employer" as defined in Section 4001(a)(2) of ERISA or a cessation of operations that is treated as such a withdrawal under Section 4062(e) of ERISA.

"EU Bail-In Legislation Schedule" shall mean the EU Bail-In Legislation Schedule published by the Loan Market Association (or any successor person), as in effect from time to time.

"Euro" or "€" shall mean the single currency of the Participating Member States.

"Event of Default" shall have the meaning assigned to such term in Section 11.01.

"Excess Obligations" shall have the meaning set forth in the last paragraph of Section 11.02.

"Exchange Act" shall mean the Securities Exchange Act of 1934, as amended.

"Excluded Account" shall mean a Deposit Account, Securities Account or Commodity Account (i) which is used for the sole purpose of making payroll and withholding tax payments related thereto and other employee wage and benefit payments and accrued and unpaid employee compensation payments (including salaries, wages, benefits and expense reimbursements, 401(k) and other retirement plans and employee benefits, including rabbi trusts for deferred compensation and health care benefits), (ii) in the case of a Foreign Loan Party, which is used for the sole purpose of paying taxes, including sales taxes, (iii) which is used as an escrow account or as a fiduciary or trust account or is otherwise held exclusively for the benefit of an unaffiliated third party, (iv) in the case of a Foreign Loan Party, which is a zero balance Deposit Account, Securities Account or Commodity Account, unless such zero balance Deposit Account is

used for purposes of the collection of Accounts (v) which constitutes a reserve account or disbursing account pledged as collateral under the NMTC Financing, (vi) the Professional Fee Account (as defined in the DIP Orders) or (vii) which is not otherwise subject to the provisions of this definition and, in the case of each Foreign Loan Party, is not used for the purposes of collection of Accounts and together with any other Deposit Accounts, Securities Accounts or Commodity Accounts that are excluded pursuant to this clause (vii), has an average daily balance for any fiscal month of less than $2,000,000; provided that the foregoing shall not constitute Excluded Accounts with respect to the Debtors (other than for purposes of Section 9.18) to the extent not excluded from the Liens granted under the DIP Orders.

"Excluded Property" shall have the meaning assigned to such term in Section 9.10.

"Excluded Securities" shall mean any of the following:

(a) any Equity Interests or Indebtedness with respect to which the Collateral Agent and the Lead Borrower reasonably agree that the cost or other consequences (including Tax consequences) of pledging such Equity Interests or Indebtedness in favor of the Secured Parties under the Security Documents are likely to be excessive in relation to the value to be afforded thereby; provided that, with respect to Equity Interests or Indebtedness in existence or pledged as of the DIP Closing Date, the term "cost or other consequences" shall not include any Tax consequences under Code Section 956;

(b) any Equity Interests or Indebtedness to the extent, and for so long as, the pledge thereof is prohibited by any Requirement of Law (in each case, except to the extent such prohibition is unenforceable after giving effect to applicable provisions of the Uniform Commercial Code, the Specified Foreign Laws and other applicable law);

(c) any Equity Interests of any person that is not a Wholly Owned Subsidiary to the extent (A) that a pledge thereof to secure the Obligations is prohibited by (i) any applicable organizational documents, constitutional documents, joint venture agreement, shareholder agreement, or similar agreement or (ii) any other contractual obligation (not created in contemplation of the consummation of the Transactions) with an unaffiliated third party not in violation of Section 10.09 that was existing on the DIP Closing Date or at the time of the acquisition of such Person and was not created in contemplation of such acquisition, (B) any organizational documents, constitutional documents, joint venture agreement, shareholder agreement, or similar agreement (or other contractual obligation referred to in subclause (A)(ii) above) prohibits such a pledge without the consent of any other party; provided that this clause (B) shall not apply if (1) such other party is a Loan Party or a Wholly Owned Subsidiary or (2) consent has been obtained to consummate such pledge (it being understood that the foregoing shall not be deemed to obligate the Lead Borrower or any Subsidiary to obtain any such consent) and for so long as such organizational documents, constitutional documents, joint venture agreement, shareholder agreement or similar agreement (or other contractual obligation referred to in subclause (A)(ii) above) or replacement or renewal thereof is in effect, or (C) a pledge thereof to secure the Obligations would give any other party (other than a Loan Party or a Wholly Owned Subsidiary) to any organizational documents, constitutional documents, joint venture agreement, shareholder agreement or similar agreement governing such Equity Interests the right to terminate its obligations thereunder; and

(d) any Margin Stock,

provided that the foregoing shall not constitute Excluded Securities with respect to the Debtors to the extent not excluded from the Liens granted under the DIP Orders.

Notwithstanding anything to the contrary herein, in no event shall any asset included in any Borrowing Base constitute Excluded Securities.

"Excluded Subsidiary" shall mean any of the following:

(i) each Subsidiary that is not a Wholly Owned Subsidiary on the DIP Closing Date (for so long as such Subsidiary remains a non-Wholly Owned Subsidiary),

(ii) each Subsidiary that is prohibited from Guaranteeing or granting Liens to secure the Obligations by any Requirement of Law or that would require consent, approval, license or authorization of a Governmental Authority to Guarantee or grant Liens to secure the Obligations (unless such consent, approval, license or authorization has been received),

(iii) each Subsidiary that is prohibited by any applicable contractual requirement (not created in contemplation of the consummation of the Transactions) from Guaranteeing or granting Liens to secure the Obligations on the DIP Closing Date or at the time such Subsidiary becomes a Subsidiary not in violation of Section 10.09 (and for so long as such restriction or any replacement or renewal thereof is in effect),

(iv) any Foreign Subsidiary (other than any Foreign Subsidiary that is organized or incorporated in a Specified Jurisdiction),

(v) any other Subsidiary with respect to which the Administrative Agent and the Lead Borrower reasonably agree that the cost or other consequences (including, without limitation, Tax consequences) of providing a Guarantee of or granting Liens to secure the Obligations are excessive in relation to the value to be afforded thereby; provided that, with respect to any Subsidiary in existence as of the DIP Closing Date (or any successor thereof) the term "cost or other consequences" shall not include any Tax consequences under Code Section 956,

(vi) each Not-for-Profit Subsidiary; and

(vii) each Immaterial Subsidiary.

Notwithstanding anything to the contrary herein, no Loan Party on the DIP Closing Date or required to become a Loan Party on the DIP Closing Date shall be an Excluded Subsidiary.

"Excluded Swap Obligation" shall mean, with respect to any Guarantor, any Swap Obligation if, and to the extent that, all or a portion of the Guarantee of such Guarantor of, or the grant by such Guarantor of a security interest to secure, such Swap Obligation (or any Guarantee thereof) is or becomes illegal under the Commodity Exchange Act or any rule, regulation or order of the Commodity Futures Trading Commission (or the application or official interpretation of any thereof) by virtue of (a) such Guarantor's failure for any reason to constitute an "eligible contract participant" as defined in the Commodity Exchange Act and the regulations thereunder or (b) in the case of a Swap Obligation subject to a clearing requirement pursuant to Section 2(h) of the Commodity Exchange Act (or any successor provision thereto), because such Guarantor is a "financial entity," as defined in Section 2(h)(7)(C)(i) of the Commodity Exchange Act (or any successor provision thereto), in each case at the time the Guarantee of such Guarantor or the grant of such security interest becomes effective with respect to such Swap Obligation, unless otherwise agreed between the Administrative Agent and the Lead Borrower. If a Swap Obligation arises under a master agreement governing more than one swap, such exclusion shall apply only to the portion of such Swap Obligation that is attributable to swaps for which such Guarantee or security interest is or becomes illegal.

"Excluded Taxes" shall mean, with respect to the Administrative Agent, any Lender or any other recipient of any payment to be made by or on account of any obligation of any Loan Party hereunder or under any other Loan Document (a "Recipient"), (i) Taxes imposed on or measured by its net income

(however denominated, and including, for the avoidance of doubt, franchise and similar Taxes imposed on it in lieu of net income Taxes) and branch profits Taxes, in each case, imposed by a jurisdiction (including any political subdivision thereof) as a result of such Recipient being organized in, having its principal office in, being engaged in a trade or business in for tax purposes, or in the case of any Lender, having its applicable lending office in, such jurisdiction, or as a result of any other present or former connection with such jurisdiction (other than any such connection arising solely from such Recipient having executed, delivered, become a party to, performed its obligations under, received payments under, received, perfected or enforced a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document), (ii) solely with respect to the North American Revolving Facility and DIP Term Facility, U.S. federal withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document to a Lender (other than to the extent such Lender is an assignee pursuant to a request by a Borrower under Section 3.04) pursuant to laws in force at the time such Lender becomes a party hereto as a Lender in respect of the North American Revolving Facility or DIP Term Facility, as applicable (or designates a new lending office in respect of the North American Revolving Facility or DIP Term Facility, as applicable), except to the extent that such Lender (or its assignor, if any) was entitled, immediately prior to the designation of a new lending office (or assignment), to receive additional amounts or indemnification payments from any Loan Party with respect to such withholding Tax pursuant to Article 5, (iii) any withholding Tax imposed on any payment by or on account of any obligation of any Loan Party hereunder that is attributable to such Recipient's failure to comply with Section 5.01(e) or (iv) any withholding Tax imposed under FATCA.

"Existing Letters of Credit" shall mean each letter of credit that is listed on Schedule 1.01(C) hereto.

"Facility" shall mean the North American Revolving Facility, the Swiss Revolving Facility and the DIP Term Facility.

"Fair Market Value" shall mean, with respect to any asset or property, the price that could be negotiated in an arms'-length transaction between a willing seller and a willing buyer, neither of whom is under undue pressure or compulsion to complete the transaction (as determined in good faith by the management of the Lead Borrower), including reliance on the most recent real property tax bill or assessment in the case of Real Property.

"FATCA" shall mean Sections 1471 through 1474 of the Code, as of the date of this Agreement (or any amended or successor version that is substantively comparable and not materially more onerous to comply with), any current or future regulations or official administrative interpretations thereof, any agreements entered into pursuant to Section 1471(b)(1) of the Code, and any fiscal or regulatory legislation, rules or practices adopted pursuant to any intergovernmental agreement, treaty or convention among Governmental Authorities and implementing such Sections of the Code.

"Federal Funds Rate" shall mean, for any day, the rate calculated by the NYFRB based on such day's federal funds transactions by depositary institutions, as determined in such manner as shall be set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB as the federal funds effective rate; provided that, if the above rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Federal Reserve Bank of New York's Website" means the website of the NYFRB at http://www.newyorkfed.org, or any successor source.

"Fee Letter" shall mean the Fee Letter, dated [__], 2020, by and among JPMCB and the Lead Borrower.

"Fees" shall mean all amounts payable pursuant to or referred to in Section 2.05.

"Final Order" shall mean an order of the Bankruptcy Court entered in the Chapter 11 Cases, in substantially the form of the Interim Order, with such modifications thereto as are satisfactory in form and substance to the Administrative Agent and the Required Lenders, which order shall, among other things, authorize on a final basis the DIP ABL Facilities and the DIP Term Facility under this Agreement and the other Loan Documents and the repayment in full of the Prepetition Obligations.

"Final Order Deadline" shall have the meaning assigned to such term in Section 9.24(c).

"Financial Officer" of any person shall mean the Chief Financial Officer, principal accounting officer, Treasurer, Assistant Treasurer, Controller, Assistant Controller or other executive responsible for the financial affairs of such person.

"Financial Statements" shall mean the annual and quarterly financial statements required to be delivered pursuant to Sections 9.04(a) and (b).

"First Day Orders" shall mean all orders entered by the Bankruptcy Court on, or within five days of, the Petition Date or based on motions filed by the Debtors on or about the Petition Date, each of which shall be subject to the terms of the DIP Orders and shall be in form and substance reasonably acceptable to the Administrative Agent.

"Fixtures" shall mean "fixtures" as such term is defined in the UCC as in effect on the date hereof in the State of New York and shall, for the purpose of Equipment located in the Netherlands, include Equipment that is located in the Netherlands and that is to be considered an immovable asset (*onroerende zaak*) by reason of apparent destination to remain at its location or otherwise (for purposes of Section 3:3(1) of the Dutch Civil Code) or a constituent part (*bestanddeel*) of an immovable asset due to affixation or in accordance with generally accepted practice (for purposes of Section 3:4 of the Dutch Civil Code).

"Flood Documentation" shall mean with respect to each Mortgaged Property located in the United States of America or any territory thereof, (i) a completed "life-of-loan" Federal Emergency Management Agency standard flood hazard determination (and to the extent a Mortgaged Property is located in a Special Flood Hazard Area, a notice about Special Flood Hazard Area status and flood disaster assistance duly executed by the Lead Borrower) and (ii) a copy of, or a certificate as to coverage under, and a declaration page relating to, the insurance policies, along with a copy of the underlying policies (if requested by the Administrative Agent) required by Section 9.02(c) hereof and the applicable provisions of the Security Documents, each of which shall (A) be endorsed or otherwise amended to include a "standard" or "New York" lender's loss payable or mortgagee endorsement (as applicable), (B) name the Collateral Agent, on behalf of the Secured Parties, as additional insured and lender's loss payee/mortgagee, (C) identify the address of each property located in a Special Flood Hazard Area, the applicable flood zone designation and the flood insurance coverage and deductible relating thereto and (D) be otherwise in form and substance reasonably satisfactory to the Collateral Agent and each of the Lenders, subject to the provisions of Sections 9.02(a), 9.02(b) and 9.02(c).

"Flood Insurance Laws" shall mean, collectively, (i) the National Flood Insurance Act of 1968 as now or hereafter in effect or any successor statute thereto, (ii) the Flood Disaster Protection Act of 1973 as now or hereafter in effect or any successor statute thereto, (iii) the National Flood Insurance Reform Act of 1994 as now or hereafter in effect or any successor statute thereto, (iv) the Flood Insurance Reform Act of 2004 as now or hereafter in effect or any successor statute thereto and (v) the Biggert-Waters Flood Insurance Reform Act of 2012 as now or hereafter in effect or any successor statute thereto.

"Forbearance Period" shall have the meaning assigned to such term in Section 14.01(c).

"Foreign Collateral" shall mean all Australian Collateral, Canadian Collateral and Dutch Collateral.

"Foreign Loan Parties" shall mean, collectively, the Australian Loan Parties and the Swiss Loan Parties.

"Foreign Priority Waterfall" shall have the meaning assigned to such term in Section 14.04.

"Foreign Subsidiary" shall mean any Subsidiary that is not incorporated or organized under the laws of the United States of America, any state thereof or the District of Columbia.

"Fourth Amendment Mortgage Properties" shall mean the parcels of Real Property located at (a) 110 Main St, Murray, KY 42071-2147, (b) 5375 N Main St, Munnsville, NY 13409-4003 and (c) 1502 W 4th Ave, Holdrege, NE 68949.

"Fronting Exposure" shall mean the Pro Rata Share of LC Exposure or Swingline Exposure of a Defaulting Lender that is a Revolving Lender, as applicable, except to the extent allocated to other Revolving Lenders under Section 2.11.

"Fronting Fees" shall have the meaning assigned to such term in Section 2.05(c).

"Full Senior Obligation Repayment" shall mean, at any time, (i) the repayment in full in cash of all of (1) the DIP ABL Obligations then outstanding, (2) prior to the DIP Term Loan Closing Date, the Prepetition Obligations then outstanding and (3) any Qualified Reinstated Prepetition Obligations then outstanding, (ii) the termination of all Commitments of any Lender in respect of the DIP ABL Facilities and (iii) the Cash Collateralization of all outstanding Letters of Credit issued or continued under the DIP ABL Facilities in an amount equal to 103% (or, in the case of Letters of Credit issued in any currency other than U.S. Dollars, 105%) of the stated amount of such Letters of Credit (or, if agreed by the applicable Issuing Bank, pursuant to any backstop or other arrangement acceptable to such Issuing Bank), other than (x) in respect of contingent indemnification and expense reimbursement claims not then due and (y) excluding any Excess Obligations.

"GAAP" shall mean generally accepted accounting principles in effect from time to time in the United States of America subject to the provisions of Section 1.02.

"Governmental Authority" shall mean the government of the United States of America, Australia, Canada, the Netherlands, Switzerland or any other country, including any political subdivision of any of the foregoing (including state, provincial, territorial, municipal, local or otherwise), the European Central Bank, the Council of Ministers of the European Union, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity (including any European supranational body) exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government.

"Guarantee" of or by any person (the "guarantor") shall mean, without duplication, (a) any obligation, contingent or otherwise, of the guarantor guaranteeing or having the economic effect of guaranteeing any Indebtedness or other monetary obligation payable or performable by another person (the "primary obligor") in any manner, whether directly or indirectly, and including any obligation of the guarantor, direct or indirect, (i) to purchase or pay (or advance or supply funds for the purchase or payment of) such Indebtedness or other obligation, (ii) to purchase or lease property, securities or services for the purpose of assuring the owner of such Indebtedness or other obligation of the payment thereof (net of the

fair market value of the property, securities or services required to be purchased, as determined by the Lead Borrower in good faith), (iii) to maintain working capital, equity capital or any other financial statement condition or liquidity of the primary obligor so as to enable the primary obligor to pay such Indebtedness or other obligation or (iv) entered into for the purpose of assuring in any other manner the holders of such Indebtedness or other obligation of the payment thereof or to protect such holders against loss in respect thereof (in whole or in part), or (b) any Lien on any assets of the guarantor securing any Indebtedness or other obligation (or any existing right, contingent or otherwise, of the holder of Indebtedness or other obligation to be secured by such a Lien) of any other person, whether or not such Indebtedness or other obligation is assumed by the guarantor; provided, however, that the term "Guarantee" shall not include endorsements of instruments for deposit or collection in the ordinary course of business or customary and reasonable indemnity obligations in effect on the DIP Closing Date or entered into in connection with any acquisition or Disposition of assets permitted by this Agreement (other than such obligations with respect to Indebtedness). The amount of any Guarantee shall be deemed to be an amount equal to the stated or determinable amount of the Indebtedness or other obligation in respect of which such Guarantee is made or, if not stated or determinable, the maximum reasonably anticipated liability in respect thereof as determined by such person in good faith. The amount of the Indebtedness or other obligation subject to any Guarantee provided by any person for purposes of clause (b) above shall (except to the extent the applicable Indebtedness has been assumed by such person or is otherwise recourse to such person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness or other obligation and (B) the Fair Market Value of the property encumbered thereby.

"Guarantee Agreement" shall mean the Guarantee Agreement executed by each Loan Party and the Collateral Agent.

"Guaranteed Creditors" shall mean and include (x) each of the Administrative Agent, the Collateral Agent, the Lenders, each Issuing Bank and the Swingline Lender and (y) any Secured Bank Product Provider or any Person that was a Secured Bank Product Provider on the DIP Closing Date or at the time of entry into a particular Secured Bank Product Obligation.

"Guarantor" shall mean and include each Borrower (with respect to the Obligations of each other Borrower) and each Subsidiary of the Lead Borrower (other than the Borrowers) that is or becomes a party to the Guarantee Agreement, whether existing on the DIP Closing Date or established, created or acquired after the DIP Closing Date, unless and until such time as such Subsidiary is released from its obligations under the Guarantee Agreement in accordance with the terms and provisions hereof or thereof.

"Hazardous Materials" shall mean all pollutants, contaminants, wastes, chemicals, materials, substances and constituents, including, without limitation, explosive or radioactive substances or petroleum by products or petroleum distillates, asbestos or asbestos-containing materials, polychlorinated biphenyls, radon gas or pesticides, fungicides, fertilizers or other agricultural chemicals, of any nature subject to regulation or which can give rise to liability under any Environmental Law.

"Hedging Agreement" shall mean any agreement with respect to any swap, forward, future or derivative transaction, or option or similar agreement involving, or settled by reference to, one or more rates, currencies, commodities, equity or debt instruments or securities, or economic, financial or pricing indices or measures of economic, financial or pricing risk or value, or credit spread transaction, repurchase transaction, reserve repurchase transaction, securities lending transaction, weather index transaction, spot contracts, fixed price physical delivery contracts, or any similar transaction or any combination of these transactions, in each case of the foregoing, whether or not exchange traded; provided that no phantom stock or similar plan providing for payments only on account of services provided by current or former directors, officers, employees or consultants of the Lead Borrower or any of the Subsidiaries shall be a Hedging Agreement.

"Immaterial Subsidiary" shall mean any Subsidiary that (a) did not, as of the last day of the fiscal quarter of the Lead Borrower most recently ended for which financial statements have been (or were required to be) delivered pursuant to Section 9.04(a) or 9.04(b), have assets (after elimination of intercompany assets) with a value in excess of 0.25% of the Consolidated Total Assets or revenues representing in excess of 0.25% of total revenues of the Lead Borrower and the Subsidiaries on a consolidated basis as of such date, and (b) taken together with all such Subsidiaries as of such date (excluding Subsidiaries that constitute Excluded Subsidiaries other than by virtue of being Immaterial Subsidiaries), did not have assets (after elimination of intercompany assets) with a value in excess of 0.50% of Consolidated Total Assets as of such date or revenues (after elimination of intercompany revenues) representing in excess of 0.50% of total revenues of the Lead Borrower and the Subsidiaries on a consolidated basis for the immediately preceding period of four fiscal quarters; provided that no Borrower shall be an Immaterial Subsidiary.

"Impacted Interest Period" shall have the meaning assigned to such term in the definition of "LIBO Rate".

"Indebtedness" of any person shall mean, without duplication,

(a) all obligations of such person for borrowed money,

(b) all obligations of such person evidenced by bonds, debentures, notes or similar instruments (except any such obligation issued in the ordinary course of business with a maturity date of no more than six months in a transaction intended to extend payment terms of trade payables or similar obligations to trade creditors incurred in the ordinary course of business),

(c) all obligations of such person under conditional sale or other title retention agreements relating to property or assets purchased by such person (except any such obligation that constitutes a trade payable or similar obligation to a trade creditor incurred in the ordinary course of business),

(d) all obligations of such person issued or assumed as the deferred purchase price of property or services (except (i) any such balance that constitutes a trade payable or similar obligation to a trade creditor incurred in the ordinary course of business, (ii) any earn-out obligations until such obligation becomes a liability on the balance sheet of such person in accordance with GAAP and is probable to be paid and reasonably calculable and (iii) liabilities accrued in the ordinary course of business; it being understood that, for the avoidance of doubt, obligations owed to banks and other financial institutions in connection with any arrangement whereby a bank or other institution purchases payables described in clause (i) above owed by the Lead Borrower or its Subsidiaries shall not constitute Indebtedness) which purchase price is due more than six months after the date of placing the property in service or taking delivery and title thereto,

(e) all Guarantees by such person of Indebtedness of others,

(f) all Capitalized Lease Obligations of such person,

(g) net payment or other settlement obligations under any Hedging Agreements,

(h) the principal component of all non-contingent reimbursement or payment obligations of such person as an account party in respect of letters of credit,

(i) the principal component of all obligations of such person in respect of bankers' acceptances,

(j) the amount of all obligations of such person with respect to the redemption, repayment or other repurchase of any Disqualified Stock (excluding accrued dividends that have not increased the liquidation preference of such Disqualified Stock), and

(k) all Indebtedness of others secured by (or for which the holder of such Indebtedness has an existing right, contingent or otherwise, to be secured by) any Lien on property owned or acquired by such person, whether or not the Indebtedness secured thereby has been assumed,

if and to the extent any of the preceding items (other than letters of credit) would appear as a liability upon a balance sheet of such person prepared in accordance with GAAP; provided that, notwithstanding the foregoing, (i) contingent obligations incurred in the ordinary course of business or consistent with past practice, (ii) any balance that constitutes a trade payable, accrued expense or similar obligation to a trade creditor, in each case incurred in the ordinary course of business, (iii) intercompany liabilities that would be eliminated on the consolidated balance sheet of the Lead Borrower and its Subsidiaries, (iv) prepaid or deferred revenue arising in the ordinary course of business, (v) in connection with the purchase by the Lead Borrower or any Subsidiary of any business, assets, Equity Interests or Person, any post-closing payment adjustments to which the seller may become entitled to the extent such payment is determined by a final closing balance sheet or such payment depends on the performance of such business after the closing; provided, however, that, at the time of closing, the amount of any such payment is not determinable and, to the extent such payment thereafter becomes fixed and determined, the amount is paid in a timely manner, (vi) obligations, to the extent such obligations would otherwise constitute Indebtedness, under any agreement that have been irrevocably defeased or irrevocably satisfied and discharged pursuant to the terms of such agreement or (vii) for the avoidance of doubt, any obligations in respect of workers' compensation claims, early retirement or termination obligations, deferred compensatory or employee or director equity plans pension fund obligations or contributions or similar claims, obligations or contributions or social security or wage taxes, in each case, shall be deemed not to constitute Indebtedness. The amount of Indebtedness of any person for purposes of clause (k) above shall (unless such Indebtedness has been assumed by such person) be deemed to be equal to the lesser of (A) the aggregate unpaid amount of such Indebtedness and (B) the Fair Market Value of the property encumbered thereby. Notwithstanding anything in this Agreement to the contrary, Indebtedness shall not include, and shall be calculated without giving effect to, (A) the effects of Financial Accounting Standards Board Accounting Standards Codification 825 and related interpretations to the extent such effects would otherwise increase or decrease an amount of Indebtedness for any purpose under this Agreement as a result of accounting for any embedded derivatives created by the terms of such Indebtedness and any such amounts that would have constituted Indebtedness under this Agreement but for the application of this sentence shall not be deemed an incurrence of Indebtedness under this Agreement and (B) interest, fees, make-whole amounts, premiums, charges or expenses, if any, relating to the principal amount of Indebtedness. For all purposes of this Agreement, the amount of Indebtedness of the Lead Borrower and its Subsidiaries shall be calculated without duplication of guaranty obligations of the Lead Borrower or any Subsidiary in respect thereof.

"Indemnified Person" shall have the meaning assigned to such term in Section 13.01(a).

"Indemnified Taxes" shall mean all Taxes imposed on or with respect to any payment by or on account of any obligation of any Loan Party hereunder or under any other Loan Document other than (a) Excluded Taxes and (b) Other Taxes.

"Initial Australian Security Agreement" shall mean:

(a) the Australian Specific Security Deed dated on or about the DIP Closing Date granted by the Australian Loan Parties in favor of the Security Trustee over all the Australian Collateral;

(b) the Australian Featherweight Security Deed dated on or about the DIP Closing Date granted by the Australian Loan Parties in favor of the Security Trustee;

(c) the Australian Specific Security Deed (Marketable Securities) dated on or about the DIP Closing Date granted by the Lead Borrower in favor of the Security Trustee over all Equity Interests it owns in the Australian Loan Parties; and

(d) each Deposit Account Control Agreement over each Deposit Account held by the Australian Loan Parties.

"Initial Dutch Security Agreement" shall mean the Dutch Movables Pledge.

"Initial Security Agreements" shall mean the Initial U.S. Security Agreement, the Initial Australian Security Agreement, the Initial Dutch Security Agreement, the Initial Swiss Security Agreements and the Initial UK Security Agreement.

"Initial Swiss Security Agreements" shall mean the Swiss Claims Assignment Agreement, the Swiss Bank Account Claims Assignment Agreement and the Swiss Share Pledge Agreement.

"Initial U.S. Security Agreement" shall mean the U.S. Collateral Agreement substantially in the form of Exhibit I dated as of the DIP Closing Date, among each U.S. Loan Party, each other Loan Party that owns Equity Interests of a person incorporated or organized under the law of the United States, any state thereof, or the District of Columbia (other than Excluded Securities) (provided that the grant by any such other Loan Party under such U.S. Collateral Agreement shall be solely with respect to such Equity Interests and related rights and assets as expressly set forth in such U.S. Collateral Agreement) and the Collateral Agent, as may be amended, restated, amended and restated, supplemented or otherwise modified from time to time.

"Initial UK Security Agreement" shall mean (a) the English law governed Book Debts and Account Charge dated as of the DIP Closing Date by the Swiss Borrower, as chargor, and the Collateral Agent and (b) the English law governed Book Debts and Account Charge dated as of the DIP Closing Date by the Lead Borrower, as chargor, and the Collateral Agent.

"Intellectual Property" shall mean all intellectual property rights, including the following intellectual property rights, and both statutory and common law rights, if applicable: (a) copyrights, registrations and applications for registration thereof, (b) Trademarks, (c) patents and industrial designs, together with any registered or unregistered rights in designs in the United Kingdom, as well as any reissued and reexamined patents and industrial designs and extensions corresponding to the patents and industrial designs and any patent and industrial design applications, as well as any related continuation, continuation in part and divisional applications and patents issuing therefrom and (d) trade secrets and confidential information, including ideas, designs, concepts, compilations of information, methods, techniques, procedures, processes and other know-how, whether or not patentable.

"Interest Period" shall mean, as to any Borrowing of a LIBO Rate Loan, the period commencing on the date of such Borrowing or on the last day of the immediately preceding Interest Period applicable to such Borrowing, as applicable, and ending one week thereafter or on the numerically corresponding day (or, if there is no numerically corresponding day, on the last day) in the calendar month that is one, two, three, six, or, if agreed to by all Lenders under the applicable Facility, twelve (12) months or less than one month thereafter, as the Lead Borrower may elect, or the date any Borrowing of a LIBO Rate Loan is converted to a Borrowing of a Base Rate Loan in accordance with Section 2.08 or repaid or prepaid in accordance with Section 2.07 or Section 2.09; provided that if any Interest Period would end on a day other

than a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless such next succeeding Business Day would fall in the next calendar month, in which case such Interest Period shall end on the next preceding Business Day. Interest shall accrue from and including the first day of an Interest Period to but excluding the last day of such Interest Period.

"Interim DIP ABL Amounts" shall have the meaning assigned to such term in Section 2.01(c).

"Interim DIP Term Amount" shall have the meaning assigned to such term in Section 2.01(a)(iii).

"Interim DIP Term Funding Date" shall have the meaning assigned to such term in Section 2.01(a)(iii).

"Interim DIP Term Loans" shall mean the DIP Term Loans funded on the Interim DIP Term Funding Date.

"Interim Order" shall have the meaning assigned to such term in Section 6.01(r).

"Interim Period" shall mean the period commencing on and from the DIP Closing Date and ending on the date on which the Prepetition Obligations Refinancing occurs.

"Interpolated Rate" shall mean, at any time, for any Interest Period, the rate per annum (rounded to the same number of decimal places as the LIBO Screen Rate) determined by the Administrative Agent (which determination shall be conclusive and binding absent demonstrable error) to be equal to the rate that results from interpolating on a linear basis between: (a) the LIBO Screen Rate for the longest period for which the LIBO Screen Rate is available) that is shorter than the applicable Impacted Interest Period; and (b) the LIBO Screen Rate for the shortest period (for which that LIBO Screen Rate is available) that exceeds the Impacted Interest Period, in each case, at such time.

"Inventory" shall mean all "inventory" (including parts, work-in-process, raw materials, and finished goods), as such term is defined in the UCC as in effect on the date hereof in the State of New York or, if applicable, in the Canadian PPSA or the Australian PPSA, wherever located, in which any Person now or hereafter has rights.

"Inventory Reserves" shall mean reserves established by the Administrative Agent in its Permitted Discretion to reflect factors that may reasonably be expected to negatively impact the value of Eligible Inventory including change in salability, obsolescence, seasonality, theft, shrinkage, imbalance, change in composition or mix, markdowns, marked to market and vendor chargebacks.

"Investment" shall have the meaning assigned to such term in Section 10.04.

"Investment Grade Rating" shall mean, at any time of determination with respect to any Person, that such Person has at such time a corporate credit rating of BBB- or better by S&P and a corporate family rating of Baa3 or better by Moody's (or comparable ratings by any other rating agency).

"IRS" shall mean the U.S. Internal Revenue Service.

"Issuing Banks" shall mean the North American Issuing Banks and the Swiss Issuing Banks, collectively.

"JPMCB" shall have the meaning assigned to such term in the preamble hereto.

"Junior Debt Restricted Payment" shall mean, any payment or other distribution (whether in cash, securities or other property), directly or indirectly made by the Lead Borrower or any if its Subsidiaries, of or in respect of principal on any Indebtedness (other than intercompany Indebtedness) that is (x) by its terms subordinated in right of payment to the Loan Obligations, (y) not secured by a Lien or (z) secured by a Lien that ranks junior in priority to the Lien securing the Obligations (each of the foregoing, a "Junior Financing"). For the avoidance of doubt, the DIP Term Obligations shall constitute a Junior Financing.

"Junior Financing" shall have the meaning assigned to such term in the definition of the term "Junior Debt Restricted Payment."

"Landlord Lien Reserve" shall mean an amount equal to three months' rent (or, if less, the balance of the term of the lease) for all of the leased locations of the Borrowers at which Eligible Inventory is stored, other than leased locations with respect to which the Administrative Agent (or the Prepetition Agent) has received a Landlord Lien Waiver and Access Agreement.

"Landlord Lien Waiver and Access Agreement" shall mean a Landlord Lien Waiver and Access Agreement, in a form reasonably approved by the Administrative Agent.

"Latest Maturity Date" shall mean, at any date of determination, the latest maturity date applicable to any Loan or Commitment under any Facility hereunder as of such date of determination.

"LC Collateral Account" shall mean a collateral account in the form of a deposit account established and maintained by the Administrative Agent for the benefit of the Secured Parties, in accordance with the provisions of Section 2.13.

"LC Disbursements" shall mean the North American LC Disbursements and/or the Swiss LC Disbursements.

"LC Documents" shall mean all documents, instruments and agreements delivered by any Borrower or any Subsidiary of any Borrower that is a co-applicant in respect of any Letter of Credit to any Issuing Bank or the Administrative Agent in respect of any Letter of Credit.

"LC Exposure" shall mean the North American LC Exposure and/or the Swiss LC Exposure.

"LC Obligations" shall mean the North American LC Obligations and/or the Swiss LC Obligations.

"LC Participation Fee" shall have the meaning assigned to such term in Section 2.05(c)(i).

"LC Request" shall mean a request in accordance with the terms of Section 2.13(b) in form and substance satisfactory to the Issuing Banks.

"LC Sublimit" shall have the meaning assigned to such term in Section 2.13(b).

"Lead Arrangers" shall mean JPMorgan Chase Bank, N.A., Bank of America, N.A., Bank of Montreal and Wells Fargo Bank, National Association, in their capacities as joint lead arrangers and bookrunners for this Agreement.

"Lead Borrower" shall have the meaning assigned to such term in the preamble hereto.

"Lender" shall mean each Person listed on Schedule 2.01, subject to adjustments in connection with any assignment after the DIP Closing Date in accordance with Section 13.04(b), as well as any Person

that becomes a "Lender" hereunder pursuant to Section 3.04 or 13.04(b), and, as the context requires, includes the Swingline Lender.

"Lender Loss Sharing Agreement" shall mean that certain Lender Loss Sharing Agreement entered into by each Revolving Lender as of the DIP Closing Date and each other Revolving Lender becoming party to this Agreement via an Assignment and Assumption or otherwise after the DIP Closing Date.

"Lender Party" shall have the meaning assigned to such term in Section 14.01(b).

"Letter of Credit" shall mean a North American Letter of Credit and/or a Swiss Letter of Credit, as applicable.

"Letter of Credit Expiration Date" shall mean the date which is five (5) Business Days prior to the Maturity Date.

"LIBO Rate" shall mean, with respect to (a) any LIBO Rate Loan denominated in any LIBOR Quoted Currency and for any applicable Interest Period, the London interbank offered rate as administered by ICE Benchmark Administration (or any other Person that takes over the administration of such rate) for such LIBOR Quoted Currency for a period equal in length to such Interest Period as displayed on pages LIBOR01 or LIBOR02 of the Reuters screen or, in the event such rate does not appear on either of such Reuters pages, on any successor or substitute page on such screen that displays such rate, or on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion (consistent with any such selection by the Administrative Agent generally under substantially similar credit facilities for which it acts as administrative agent) (in each case the "LIBO Screen Rate") at approximately 11:00 a.m., London time, on the Quotation Day for such LIBOR Quoted Currency and Interest Period; provided that, if the LIBO Screen Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement and (b) any LIBO Rate Borrowing denominated in Australian Dollars and for any applicable Interest Period, the AUD Screen Rate for Australian Dollars on the Quotation Day for Australian Dollars and Interest Period; provided that, if the AUD Screen Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement; provided, further, that if a LIBO Screen Rate or the AUD Screen Rate, as applicable, shall not be available at such time for such Interest Period (the "Impacted Interest Period"), then the LIBO Screen Rate or AUD Screen Rate, as applicable, for such currency and such Interest Period shall be the Interpolated Rate; provided that, if any Interpolated Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement. It is understood and agreed that all of the terms and conditions of this definition of "LIBO Rate" shall be subject to Section 3.01.

"LIBO Rate Loan" shall mean a Loan made by the Lenders to the Borrowers which bears interest at a rate based on the LIBO Rate (other than pursuant to clause (c) of the definition of "Base Rate"). LIBO Rate Loans may be denominated in U.S. Dollars or in an applicable Alternative Currency.

"LIBO Screen Rate" has the meaning assigned to such term in the definition of "LIBO Rate".

"LIBOR Quoted Currency" shall mean each of (i) U.S. Dollars, (ii) Euros, (iii) Pound Sterling and (iv) Swiss Francs.

"Lien" shall mean, with respect to any asset, (a) any mortgage, deed of trust, lien, hypothecation, pledge, charge, security interest or similar monetary encumbrance in or on such asset (including, without limitation, any "security interest" as defined in Sections 12(1) and 12(2) of the Australian PPSA) and (b) the interest of a vendor or a lessor under any conditional sale agreement, capital lease or title retention agreement (or any financing lease having substantially the same economic effect as any of the foregoing)

relating to such asset; provided that in no event shall an operating lease or an agreement to sell be deemed to constitute a Lien.

"Line Cap" shall mean an amount equal to the lesser of (a) the Aggregate Revolving Commitments and (b) the then applicable Aggregate Borrowing Base.

"Liquidity Event" shall mean the occurrence of a date when (a) Aggregate Availability shall have been less than the greater of 10% of the Line Cap and $40,000,000 for five (5) consecutive Business Days, until such date as (b) Aggregate Availability shall have been at least equal to the greater of 10% of the Line Cap and $40,000,000 for thirty (30) consecutive calendar days.

"Liquidity Notice" shall mean a written notice delivered by the Administrative Agent at any time during a Liquidity Period (other than during the Interim Period) to any bank or other depository at which any Deposit Account (other than any Excluded Account) is maintained directing such bank or other depository (a) to remit all funds in such Deposit Account to, in the case of a U.S. Loan Party, a Dominion Account or, in the case of a Deposit Account of a Foreign Loan Party, to the Administrative Agent on a daily basis, (b) to cease following directions or instructions given to such bank or other depository by any Loan Party regarding the disbursement of funds from such Deposit Account (other than any Excluded Account), and (c) to follow all directions and instructions given to such bank or other depository by the Administrative Agent in each case, pursuant to the terms of any Deposit Account Control Agreement in place.

"Liquidity Period" shall mean (a) initially, the Interim Period and (b) thereafter, shall mean any period throughout which (i) a Liquidity Event has occurred and is continuing or (ii) an Event of Default has occurred and is continuing.

"Liquidity Reserve" shall mean, at any time, a reserve established by the Administrative Agent in an amount equal to the minimum Aggregate Availability required by Section 10.10 at such time.

"Loan Documents" shall mean this Agreement, and, after the execution and delivery thereof pursuant to the terms of this Agreement, each Note, the Guarantee Agreement, each Security Document and, during the pendency of the Chapter 11 Cases, the DIP Orders.

"Loan Obligations" shall mean all now existing or hereafter arising debts, obligations, covenants, and duties of payment or performance by any Loan Party of every kind, matured or unmatured, direct or contingent, owing, arising, due, or payable to any Lender, Issuing Bank, Agent or Indemnified Person by any Loan Party arising out of this Agreement or any other Loan Document, including, without limitation, all obligations to repay principal or interest (including interest, fees and other amounts accruing during any proceeding under any Debtor Relief Laws, regardless of whether allowed or allowable in such proceeding) on the Loans, Letters of Credit or any other Obligations, and to pay interest, fees, costs, charges, expenses, professional fees, and all sums chargeable to any Loan Party or for which any Loan Party is liable as indemnitor under the Loan Documents, whether or not evidenced by any note or other instrument.

"Loan Party" shall mean the Borrowers and the Guarantors.

"Loans" shall mean advances made to or at the instructions of the Lead Borrower pursuant to Article 2 hereof and may constitute Revolving Loans, Swingline Loans or DIP Term Loans.

"Local Time" shall mean (i) New York City time in the case of a Loan, Borrowing or LC Disbursement denominated in U.S. Dollars and (ii) London time in the case of a Loan, Borrowing or LC Disbursement denominated in Pound Sterling, Euros, Australian Dollars or Swiss Francs.

"Margin Stock" shall have the meaning assigned to such term in Regulation U.

"Material Adverse Effect" shall mean a material adverse effect on (a) the business, property, operations or financial condition of the Lead Borrower and its Subsidiaries, taken as a whole ((x) other than, in the case of the Debtors, (A) any events or conditions leading up to the filing of the Chapter 11 Cases, (B) the filing of the Chapter 11 Cases and (C) those events which customarily occur following the commencement of the Chapter 11 Cases and other events ancillary thereto and (y) in the case of the Debtors, taking into account the effect of the automatic stay under the Bankruptcy Code), (b) the validity or enforceability of any of the Loan Documents against a Loan Party or (c) the rights and remedies of the Administrative Agent, the Collateral Agent, the Issuing Banks, the Swingline Lender and the Lenders against a Loan Party thereunder.

"Material Indebtedness" shall mean Indebtedness (other than Loans) of any one or more of the Lead Borrower or any Subsidiary in an aggregate principal amount exceeding $50,000,000.

"Material Real Property" shall mean any parcel of Real Property or group of parcels of Real Property that are adjacent, contiguous or located in close proximity as an integrated operation located in the United States having a Fair Market Value (on a per-property basis) greater than or equal to $5,000,000 as of (x) the DIP Closing Date, for Real Property then owned or (y) the date of acquisition, for Real Property acquired after the DIP Closing Date, in each case as determined by the Lead Borrower in good faith; provided that (i) "Material Real Property" shall exclude all leasehold interests in Real Property and (ii) the Lead Borrower may elect in its discretion to treat any such Real Property as a "Material Real Property" (subject to the requirements of this Agreement relating to Material Real Properties) even if its Fair Market Value is less than the foregoing threshold. Notwithstanding the foregoing, it is understood and agreed that the parcel of Real Property located at 1502 W 4th Ave, Holdrege, NE 68949 shall be deemed to be a Material Real Property.

"Material Subsidiary" shall mean any Subsidiary, other than an Immaterial Subsidiary.

"Maturity Date" shall mean the earlier of (i) the date that is 9 months following the Petition Date, and (ii) the effective date of a plan of reorganization filed in the Chapter 11 Cases that is confirmed pursuant to an order entered by the Bankruptcy Court.

"Milestone" shall have the meaning assigned to such term in Section 9.24.

"Moody's" shall mean Moody's Investors Service, Inc. (or an applicable foreign Affiliate thereof).

"Mortgage Policy" shall mean an ALTA title insurance policy (or its equivalent in non-ALTA jurisdictions) with respect to the applicable real property naming the Administrative Agent as insured party for the benefit of the applicable Lenders, insuring that the Mortgage creates a valid and enforceable first priority mortgage lien (subject to (x) Permitted Borrowing Base Liens which do not have priority over the Lien in favor of the Collateral Agent or (y) any other Permitted Lien for which the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Permitted Lien (including, without limitation, Liens securing the NMTC Financing, to the extent of the NMTC Reserve)) on the applicable parcel of real property, free and clear of all Liens, defects and encumbrances (except as set forth in the immediately preceding parenthetical), which Mortgage Policies shall (A) be in an amount no greater than the value of such parcel of real property, as determined by the appraisal report to be delivered pursuant to clause (a) of the definition of Eligible Real Property (provided, however, that, if such Eligible Real Property is located in a mortgage or recording tax jurisdiction and the Administrative Agent limits its recovery under the applicable Mortgage, the insured amount shall be equal to 120% of such appraised value), (B) be from a nationally recognized title insurance company reasonably acceptable to the

Administrative Agent ("Title Insurer"), (C) include such endorsements and reinsurance as the Administrative Agent may reasonably require and (D) otherwise satisfy the reasonable title insurance requirements of the Administrative Agent.

"Mortgaged Properties" shall mean (a) the Material Real Properties that are identified on Schedule 1.01(B) on the DIP Closing Date other than the Real Property located at 731 Highway 142 & 3200 Butzen Dr., Poplar Bluff, MO 63901-8159 (all such Material Real Properties, the "DIP Closing Date Mortgaged Properties") and (b) each additional Material Real Property encumbered by a Mortgage after the DIP Closing Date pursuant to Section 9.10.

"Mortgages" shall mean, collectively, the mortgages, trust deeds, deeds of trust, deeds to secure debt, assignments of leases and rents, debentures, deeds of hypothec and other security documents (including amendments to any of the foregoing) executed and delivered with respect to Mortgaged Properties (either as stand-alone documents or forming part of other Security Documents), each in form and substance reasonably satisfactory to the Collateral Agent and the Lead Borrower, in each case, as amended, supplemented or otherwise modified from time to time. For the avoidance of doubt, upon the expiration or termination of any such agreement or instrument in accordance with its terms (including, without limitation, in connection with the release of a Loan Party in accordance with the Loan Documents), such document shall cease to constitute a "Mortgage".

"Multiemployer Plan" shall mean a multiemployer plan as defined in Section 4001(a)(3) of ERISA to which the Lead Borrower or any Subsidiary or any ERISA Affiliate (other than one considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Code Section 414) is making or accruing an obligation to make contributions, or has within any of the preceding six plan years made or accrued an obligation to make contributions.

"Net Proceeds" shall mean, with respect to any event, (a) the cash proceeds actually received by the Lead Borrower or any Subsidiary in respect of such event including (A) any cash received in respect of any non-cash proceeds (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or purchase price adjustment receivable or otherwise, but excluding any interest payments), but only as and when received, (B) in the case of a casualty, insurance proceeds and (C) in the case of a condemnation or similar event, condemnation awards and similar payments, minus (b) the sum of (i) the out-of-pocket fees and expenses actually incurred by the Lead Borrower or any Subsidiary (other than those paid to Affiliates) in connection with such event, (ii) in the case of a Disposition of an asset (including pursuant to a sale leaseback transaction or a casualty or a condemnation or similar proceeding), the amount of all payments required to be made as a result of such event to repay Indebtedness (other than Loans) or other obligations related to and secured by such asset or otherwise subject to mandatory prepayment as a result of such event and (iii) the amount of all taxes paid (or reasonably estimated to be payable) and the amount of any reserves established in accordance with GAAP against any adjustment to the sale price or any liabilities and that are related to such asset or to such event (as determined reasonably and in good faith by a Financial Officer of the Lead Borrower); provided that, upon the reversal (without the satisfaction of any applicable adjustment to the sale price or liabilities in cash in a corresponding amount) of all or any portion of any reserve described in clause (b)(iii) above or if such adjustment to the sale price or liabilities have not been satisfied in cash and such reserve is not reversed within 365 days after such event, then, without duplication, the amount of any such reversal of such reserve shall be deemed to be "Net Proceeds" of such event received at the time of such reversal, and any such reserve remaining outstanding on such 365th day shall be deemed to be "Net Proceeds" of such event received on such 365th day, as applicable; provided further that any proceeds held in escrow pending a purchase price, net working capital or other similar adjustment and/or for the duration of any indemnity period shall not constitute Net Proceeds until released from escrow to the Lead Borrower or applicable Subsidiary.

"NMTC Financing" shall mean the financing transaction contemplated by that certain Loan Agreement dated as of August 16, 2017 among ST CDE XXXVIII, LLC, a Georgia limited liability company, DVCI CDE XXXIV, LLC, a Delaware limited liability company, MUNISTRATEGIES SUB-CDE#24, LLC, a Mississippi limited liability company, and the Lead Borrower, as borrower, relating to the financing of the facilities located at 46 Holland Industrial Park, Statesboro, Georgia 30461 and 7251 Zell Miller Parkway, Statesboro, Georgia 30458.

"NMTC Reserve" shall mean a reserve established by the Administrative Agent in the exercise of its Permitted Discretion in respect of liabilities of the Lead Borrower and/or its Subsidiaries under the NMTC Financing, to the extent secured by a Lien on any assets of the Lead Borrower and/or its Subsidiaries.

"NOLV Percentage" shall mean the fraction, expressed as a percentage, (a) the numerator of which is the amount equal to the blended recovery on the aggregate amount of Eligible Equipment, Eligible Inventory or Eligible Trademarks at such time on a "net orderly liquidation value" basis as set forth in the most recent appraisal of inventory, equipment and/or trademarks received by the Administrative Agent in accordance with Section 9.07(b), net of operating expenses, liquidation expenses and commissions reasonably anticipated in the disposition of such assets, and (b) the denominator of which is (i) in the case of Eligible Equipment, the market value of the aggregate amount of Eligible Equipment, as set forth in the most recent appraisal of equipment received by the Administrative Agent in accordance with Section 9.07(b), (ii) in the case of Eligible Inventory, the original Cost of the aggregate amount of Eligible Inventory subject to appraisal and (iii) in the case of Eligible Trademarks, the market value of the aggregate amount of Eligible Trademarks, as set forth in the most recent appraisal of trademarks received by the Administrative Agent in accordance with Section 9.07(b).

"Non-Debtor Loan Party" shall have the meaning assigned to that term in Section 10.01(e).

"Non-Defaulting Lender" shall mean and include each Lender other than a Defaulting Lender.

"Non-U.S. Lender" shall mean a Lender that is neither a U.S. Person nor a Disregarded Entity that is treated for U.S. federal income Tax purposes as having a U.S. Person as its sole owner.

"Non-U.S. Security Documents" shall mean the Australian Security Documents, the Swiss Security Documents, the Dutch Security Documents and the Initial UK Security Agreement.

"North American Issuing Bank" shall mean, as the context may require, (a) JPMCB, with respect to Letters of Credit issued by it, Bank of America, N.A., with respect to Letters of Credit issued by it, Bank of Montreal, with respect to Letters of Credit issued by it and Wells Fargo Bank, National Association, with respect to Letters of Credit issued by it, and (b) any other Revolving Lender that may become a North American Issuing Bank pursuant to Sections 2.13(i) and 2.13(k), with respect to Letters of Credit issued by such Revolving Lender; or (c) collectively, all of the foregoing. Each North American Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by affiliates or branches of such North American Issuing Bank (including without limitation with respect to Letters of Credit with a co-Applicant that is not a Foreign Loan Party), in which case the term "North American Issuing Bank" shall include any such affiliate or branch with respect to Letters of Credit issued by such affiliate or branch.

"North American Issuing Bank Sublimit" shall mean (i) with respect to JPMCB, $1,000,000, (ii) with respect to Bank of America, N.A., $1,000,000, (iii) with respect to Bank of Montreal, $1,000,000, (iv) with respect to Wells Fargo Bank, National Association, $1,000,000 and (v) with respect to each other North American Issuing Bank, such amount as may be agreed among the Lead Borrower and such other North American Issuing Bank (and notified to the Administrative Agent) at the time such other North

American Issuing Bank becomes a North American Issuing Bank. The North American Issuing Bank Sublimit of any North American Issuing Bank may be increased or decreased as agreed by such North American Issuing Bank and the Lead Borrower (each acting in their sole discretion) and notified in a writing executed by such North American Issuing Bank and the Lead Borrower. It is understood and agreed that Existing Letters of Credit issued under the Prepetition Credit Agreement and any Letters of Credit issued under this Agreement after the DIP Closing Date, in each case, in excess of the foregoing sublimit amounts shall be deemed to have been issued at the discretion of the applicable Issuing Bank.

"North American LC Commitment" shall mean the commitment of each North American Issuing Bank to issue Letters of Credit under the North American Revolving Facility pursuant to Section 2.13.

"North American LC Disbursement" shall mean a payment or disbursement made by any North American Issuing Bank pursuant to a North American Letter of Credit under the North American Revolving Facility.

"North American LC Exposure" shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding North American Letters of Credit at such time *plus* (b) the aggregate principal amount of all North American LC Disbursements that have not yet been reimbursed at such time. The North American LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage (with respect to the North American Revolving Facility) of the aggregate North American LC Exposure at such time.

"North American LC Obligations" shall mean the sum (without duplication) of (a) all amounts owing by the Borrowers for any drawings under North American Letters of Credit (including any bankers' acceptances or other payment obligations arising therefrom); and (b) the stated amount of all outstanding North American Letters of Credit.

"North American LC Sublimit" shall have the meaning assigned to such term in Section 2.13(b).

"North American Letter of Credit" shall mean any letters of credit issued or to be issued by any North American Issuing Bank under the North American Revolving Facility for the account of any U.S. Borrower (or any Subsidiary of such Borrower, with such Borrower as a co-applicant thereof) pursuant to Section 2.13, including any standby letter of credit, time, or documentary letter of credit or any functional equivalent in the form of an indemnity, or bank guarantee or similar form of credit support issued by the Administrative Agent or a North American Issuing Bank for the benefit of a U.S. Borrower.

"North American Revolving Borrowing" shall mean a Borrowing comprised of North American Revolving Loans.

"North American Revolving Commitment" shall mean, with respect to each Revolving Lender, the commitment, if any, of such Revolving Lender to make North American Revolving Loans hereunder up to the amount set forth and opposite such Revolving Lender's name on Schedule 2.01 as of the DIP Closing Date and as of the DIP Term Facility Closing Date, subject to adjustments in connection with any assignment after the DIP Closing Date or the DIP Term Facility Closing Date in accordance with Section 13.04(b), in each case, under the caption "North American Revolving Commitment," or in the Assignment and Assumption pursuant to which such Revolving Lender assumed its North American Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Revolving Lender pursuant to Section 13.04. The aggregate amount of the Revolving Lenders' North American Revolving Commitments (x) on the DIP Closing Date is $383,700,000 and (y) subject to reduction as provided in Section 2.07, on the DIP Term Loan Closing Date shall be $321,200,000.

"North American Revolving Exposure" shall mean, with respect to any Revolving Lender at any time, the aggregate principal amount at such time of all outstanding North American Revolving Loans of such Revolving Lender, *plus* the aggregate amount of such Revolving Lender's Swingline Exposure under the North American Revolving Facility, *plus* the aggregate amount of such Revolving Lender's North American LC Exposure in respect of Letters of Credit issued for a U.S. Borrower.

"North American Revolving Facility" shall mean the North American Revolving Commitments of the Revolving Lenders and the Loans and Letters of Credit pursuant to those North American Revolving Commitments in accordance with the terms hereof.

"North American Revolving Lenders" shall mean each Revolving Lender that has a North American Revolving Commitment or North American Revolving Loans at such time.

"North American Revolving Loans" shall mean advances made pursuant to Article 2 hereof under the North American Revolving Facility (including, for the avoidance of doubt, any North American Swingline Loans).

"North American Swingline Loans" shall have the meaning assigned to such term in Section 2.12(a).

"Not-for-Profit Subsidiary" shall mean an entity, including entities qualifying under Section 501(c)(3) of the Code, that uses surplus revenue to achieve its goals rather than distributing them as profit or dividends.

"Note" shall mean each revolving note substantially in the form of Exhibit B hereto.

"Notice of Borrowing" shall mean a notice substantially in the form of the relevant notice attached as Exhibit A-1 hereto or, in the case of a Swingline Borrowing, Exhibit A-2 hereto.

"Notice of Conversion/Continuation" shall mean a notice substantially in the form of Exhibit A-3 hereto.

"Notice Office" shall mean JPMorgan Chase Bank, N.A., 10 S. Dearborn Street, Chicago, Illinois 60603, Telephone Number: (312) 732-8111, Fax Number: (312) 548-1943, Email: john.morrone@jpmorgan.com, Attn: John Morrone or, in each case, such other offices or persons as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"Noticed Hedge" shall mean any Secured Bank Product Obligations arising under a Swap Contract described under clause (b) of the definition of "Bank Product" with respect to which the Lead Borrower and the Secured Bank Product Provider thereof have notified the Administrative Agent and the DIP Term Lender Notice Office of its intent to include such Secured Bank Product Obligations as a Noticed Hedge hereunder and with respect to which the Administrative Agent has established a Bank Product Reserve in the maximum amount thereof.

"NYFRB" shall mean the Federal Reserve Bank of New York.

"NYFRB Rate" shall mean, for any day, the greater of (a) the Federal Funds Rate in effect on such day and (b) the Overnight Bank Funding Rate in effect on such day (or for any day that is not a Business Day, for the immediately preceding Business Day); provided that if none of such rates are published for any day that is a Business Day, the term "NYFRB Rate" shall mean the rate for a federal funds transaction quoted at 11:00 a.m. on such day received to the Administrative Agent from a federal funds broker of

recognized standing selected by it; provided further that, if any of the aforesaid rates shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement.

"Obligations" shall mean (a) the Loan Obligations and (b) all Secured Bank Product Obligations (with respect to any Loan Party, other than any Excluded Swap Obligation of such Loan Party) entered into by the Lead Borrower or any of its Subsidiaries, whether now in existence or hereafter arising. Notwithstanding anything to the contrary contained above, other than in connection with any application of proceeds pursuant to Section 11.02, (x) obligations of any Loan Party under any Secured Bank Product Obligations shall be secured and guaranteed pursuant to the Loan Documents only to the extent that, and for so long as, the Loan Obligations are so secured and guaranteed and (y) any release of Collateral or Guarantors effected in the manner permitted by this Agreement shall not require the consent of holders of obligations under Secured Bank Product Obligations.

"Other Taxes" shall mean all present or future stamp or documentary Taxes or any other excise, transfer, sales, property, intangible, mortgage recording or similar Taxes arising from any payment made hereunder or under any other Loan Document or from the execution, registration, delivery or enforcement of, consummation or administration of, from the receipt or perfection of security interest under, or otherwise with respect to, any Loan Document or Letter of Credit, except any such Taxes that are imposed with respect to an assignment (other than an assignment made pursuant to Section 3.04) as a result of any present or former connection between the Recipient and the jurisdiction imposing such Tax (other than any such connection arising solely from such Recipient having executed, delivered, become party to, performed its obligations under, received payments under, received, perfected or enforced a security interest under, engaged in any other transaction pursuant to or enforced any Loan Document, or sold or assigned an interest in any Loan, Letter of Credit or Loan Document).

"Outstanding Amount" shall mean, with respect to Loans on any date, the Dollar Equivalent amount of the aggregate outstanding principal amount thereof after giving effect to any borrowings and prepayments or repayments of Loans occurring on such date.

"Overnight Bank Funding Rate" shall mean, for any day, the rate comprised of both overnight federal funds and overnight LIBO Rate borrowings by U.S.-managed banking offices of depository institutions, as such composite rate shall be determined by the NYFRB as set forth on the Federal Reserve Bank of New York's Website from time to time, and published on the next succeeding Business Day by the NYFRB as an overnight bank funding rate (from and after such date as the NYFRB shall commence to publish such composite rate).

"Overnight LIBO Rate" shall mean, with respect to any Overnight LIBO Rate Loan on any day, a rate per annum equal to the London interbank offered rate as administered by the ICE Benchmark Administration Limited (or any other Person that takes over the administration of such rate) for overnight deposits of an Alternative Currency (other than Australian Dollars) as displayed on the applicable Reuters screen page (LIBOR01 or LIBOR02) (or, in the event such rate does not appear on a page of the Reuters screen, on the appropriate page of such other information service that publishes such rate as shall be selected by the Administrative Agent from time to time in its reasonable discretion (consistent with any such selection by the Administrative Agent generally under substantially similar credit facilities for which it acts as administrative agent)) at approximately 11:00 a.m., London time, on such day; provided that, if the Overnight LIBO Rate shall be less than 1.00%, such rate shall be deemed to be 1.00% for all purposes of this Agreement. It is understood and agreed that all of the terms and conditions of this definition of "Overnight LIBO Rate" shall be subject to Section 3.01.

"Overnight LIBO Rate Loan" shall mean a Loan made by the Swingline Lender or any other Lenders to any Borrower which bears interest at a rate based on the Overnight LIBO Rate. Overnight LIBO

Rate Loans may be denominated in U.S. Dollars or in an Alternative Currency (other than Australian Dollars). All Swingline Loans (other than North American Swingline Loans) shall be Overnight LIBO Rate Loans or Loans with such other rate as may be agreed by the applicable Borrower and the Swingline Lender in its sole discretion.

"Parallel Debt Obligation" and "Parallel Debt Obligations" shall have the meanings assigned to such term in Section 12.15.

"Participant" shall have the meaning assigned to such term in Section 13.04(c).

"Participant Register" shall have the meaning assigned to such term in Section 13.04(c).

"Participating Member State" shall mean any member state of the European Union that has the euro as its lawful currency in accordance with legislation of the European Union relating to Economic and Monetary Union.

"Patriot Act" shall mean the Uniting and Strengthening America by Providing Appropriate Tools Required to Intercept and Obstruct Terrorism Act of 2001 (Title III of Pub. L. No. 107 56 (signed into law October 26, 2001)).

"Payment Office" shall mean the office of the Administrative Agent located at 10 South Dearborn Street, Floor L2, Chicago, Illinois 60603, or such other office as the Administrative Agent may hereafter designate in writing as such to the other parties hereto.

"PBGC" shall mean the Pension Benefit Guaranty Corporation referred to and defined in ERISA.

"Perfection Certificate" shall mean the Perfection Certificate with respect to the Borrowers and the other Loan Parties substantially in the form attached hereto as Exhibit G, or such other form as is reasonably satisfactory to the Administrative Agent, as the same may be supplemented from time to time to the extent required by Section 9.04(f).

"Permitted Borrowing Base Liens" shall mean Liens on the Collateral permitted by Sections 10.02(d), (e), and (oo) (in the case of clauses (e) and (oo), subject to compliance with clause (iii) of the definition of "Eligible Inventory" and, in each case, solely to the extent any such Lien set forth in clause (d), (e) or (oo) arises by operation of law).

"Permitted Business" shall mean any business, service or activity that is the same as, or reasonably related, incidental, ancillary, complementary or similar to, or that is a reasonable extension or development of, any of the businesses, services or activities in which the Lead Borrower and its Subsidiaries are engaged on the DIP Closing Date.

"Permitted Discretion" shall mean reasonable (from the perspective of a secured asset-based lender) credit judgment exercised in good faith in accordance with customary business practices of the Administrative Agent for comparable asset-based lending transactions, and as it relates to the establishment of reserves or the imposition of exclusionary criteria shall require that (a) the contributing factors to the imposition of any reserves shall not duplicate (i) the exclusionary criteria set forth in the definitions of Eligible Accounts, Eligible Equipment, Eligible Inventory, Eligible Real Property or Eligible Trademarks, as applicable, and vice versa or (ii) any reserves deducted in computing book value and (b) the amount of any such reserve so established or the effect of any adjustment or imposition of exclusionary criteria be a reasonable quantification of the incremental dilution of the Borrowing Base attributable to such contributing factors.

"Permitted Investments" shall mean:

(a) direct obligations of the United States of America, Canada, Switzerland, the United Kingdom (and any nation thereof) or any member of the European Union or any agency thereof or obligations guaranteed by the United States of America, Canada, Switzerland, the United Kingdom (and any nation thereof) or any member of the European Union or any agency thereof, in each case with maturities not exceeding two years from the date of acquisition thereof;

(b) time deposit accounts, certificates of deposit, guaranteed investment certificates, money market deposits, banker's acceptances and other bank deposits maturing within 180 days of the date of acquisition thereof issued by a bank or trust company having capital, surplus and undivided profits in excess of $250,000,000 and whose long-term debt, or whose parent holding company's long-term debt, is rated at least A by S&P or A2 by Moody's (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(c) repurchase obligations with a term of not more than 180 days for underlying securities of the types described in clause (a) above entered into with a bank meeting the qualifications described in clause (b) above;

(d) commercial paper, maturing not more than one year after the date of acquisition, issued by a corporation (other than an Affiliate of the Lead Borrower) with a rating at the time as of which any investment therein is made of P-1 (or higher) according to Moody's, or A-1 (or higher) according to S&P (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(e) securities with maturities of two years or less from the date of acquisition, issued or fully guaranteed by any State of the United States of America, or by any political subdivision or taxing authority thereof, and rated at least A by S&P or A by Moody's (or such similar equivalent rating or higher by at least one nationally recognized statistical rating organization (as defined in Rule 436 under the Securities Act));

(f) shares of mutual funds whose investment guidelines restrict 95% of such funds' investments to those satisfying the provisions of clauses (a) through (e) above;

(g) money market funds that (i) comply with the criteria set forth in Rule 2a-7 under the Investment Company Act of 1940, (ii) are rated AAA by S&P or Aaa by Moody's and (iii) have portfolio assets of at least $1,000,000,000;

(h) time deposit accounts, certificates of deposit, guaranteed investment certificates, money market deposits, banker's acceptances and other bank deposits in an aggregate face amount not in excess of 0.5% of the total assets of the Lead Borrower and the Subsidiaries, on a consolidated basis, as of the end of the Lead Borrower's most recently completed fiscal year; and

(i) instruments equivalent to those referred to in clauses (a) through (h) above denominated in any foreign currency comparable in credit quality and tenor to those referred to above and commonly used by corporations for cash management purposes in any jurisdiction outside the United States of America to the extent reasonably required in connection with any business conducted by the Lead Borrower or any Subsidiary organized/incorporated in such jurisdiction.

"Permitted Liens" shall have the meaning assigned to such term in Section 10.02.

"Person" shall mean any natural person, corporation, business trust, joint venture, association, company, partnership, limited liability company, unlimited liability company or government, individual or family trusts, or any agency or political subdivision thereof.

"Petition Date" shall have the meaning assigned to such term in the recitals of this Agreement.

"Phase I Environmental Assessment" shall mean a Phase I environmental assessment, consistent with the ASTM Phase I standard in effect at the time performed, from an environmental consultant reasonably acceptable to the Administrative Agent, dated as of a date reasonably acceptable to the Administrative Agent and indicating that, as of such date, no recognized environmental conditions (as defined by ASTM) or other adverse environmental conditions (in each case, other than conditions acceptable to the Administrative Agent in its Permitted Discretion) are present in, on, under or exist with respect to the applicable parcel of real property and any improvements thereon.

"Plan" shall mean any employee pension benefit plan (other than a Multiemployer Plan) that is (i) subject to the provisions of Title IV of ERISA or Section 412 of the Code or Section 302 of ERISA, (ii) sponsored or maintained (at the time of determination or at any time within the five years prior thereto) by the Lead Borrower, any other Borrower, any Subsidiary or any ERISA Affiliate, and (iii) in respect of which the Lead Borrower, any other Borrower, any Subsidiary or any ERISA Affiliate is (or, if such plan were terminated, would under Section 4069 of ERISA be deemed to be) an "employer" as defined in Section 3(5) of ERISA.

"Plan Asset Regulations" shall mean 29 CFR § 2510.3-101 *et seq*., as modified by Section 3(42) of ERISA, as amended from time to time.

"Platform" shall mean Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system.

"Pledged Collateral" shall have the meaning assigned to such term in the Initial U.S. Security Agreement.

"Pound Sterling" or "£" shall mean the lawful currency of the United Kingdom.

"primary obligor" shall have the meaning assigned to such term in the definition of the term "Guarantee."

"Prepetition Agent" shall mean the administrative agent and collateral agent under the Prepetition Credit Agreement.

"Prepetition Collateral" shall mean the Loan Parties' assets securing Prepetition Obligations.

"Prepetition Credit Agreement" shall have the meaning assigned to such term in the recitals of this Agreement.

"Prepetition Hedging Obligations" shall mean any Secured Bank Product Obligations (as defined under the Prepetition Credit Agreement) arising under any Swap Contract with respect to which (other than in respect of any Swap Contract with JPMCB or its Affiliates or branches) the Secured Bank Product Provider (as defined under the Prepetition Credit Agreement) thereof have notified the Administrative Agent or the Prepetition Agent of the intent to include such Secured Bank Product Obligations as Prepetition Hedging Obligations hereunder.

"Prepetition Hedging Reserves" shall mean the aggregate amount of reserves established by the Administrative Agent from time to time in its Permitted Discretion in respect of the Prepetition Hedging Obligations (which shall at all times include a reserve for the maximum amount of all Prepetition Hedging Obligations outstanding at that time provided that any such reserve taken for any Prepetition Hedging Obligations shall be automatically eliminated upon the payment in full of the Prepetition Hedging Obligations).

"Prepetition Lenders" shall have the meaning assigned to such term in the recitals of this Agreement.

"Prepetition Obligation Payoff Letter" shall mean one or more customary payoff letters in form and substance reasonably acceptable to the Administrative Agent and the Required DIP Term Lenders in respect of the Prepetition Obligations setting forth the amount of Prepetition Obligations to be paid off and confirming that upon receipt of such amount by the Prepetition Agent, all Prepetition Obligations shall be deemed paid in full and all guaranties and security interests over Prepetition Collateral in respect thereof shall be terminated and released (subject to customary reinstatement if all or a portion of the payoff amount is voided or rescinded or must be returned to the Loan Parties under the Bankruptcy Code, any other Debtor Relief Law or otherwise).

"Prepetition Obligations" means "Obligations" as defined in the Prepetition Credit Agreement.

"Prepetition Obligations Refinancing" shall have the meaning assigned to such term in Section 6.02(a).

"Prepetition Secured Parties" shall mean the "Secured Parties" under and as defined in the Prepetition Credit Agreement.

"Prime Rate" shall mean the rate of interest last quoted by The Wall Street Journal as the "Prime Rate" in the U.S. or, if The Wall Street Journal ceases to quote such rate, the highest per annum interest rate published by the Federal Reserve Board in Federal Reserve Statistical Release H.15 (519) (Selected Interest Rates) as the "bank prime loan" rate or, if such rate is no longer quoted therein, any similar rate quoted therein (as reasonably and in good faith determined by the Administrative Agent) or any similar release by the Federal Reserve Board (as reasonably and in good faith determined by the Administrative Agent); provided that, if any such rate shall be less than zero, such rate shall be deemed to be zero for purposes of this Agreement. Each change in the Prime Rate shall be effective from and including the date such change is publicly announced or quoted as being effective.

"Priority Payables Reserve" shall mean reserves for amounts which rank or are capable of ranking in priority to, or *pari passu* with, the Liens granted to the Collateral Agent under the Security Documents and/or for amounts which may represent costs relating to the enforcement of the Collateral Agent's Liens, including without limitation, in the Permitted Discretion of the Administrative Agent, any such amounts due and not paid for wages, vacation and/or holiday pay, severance pay, employee deductions, income tax, amounts due and not paid under any legislation relating to workers' compensation or to employment insurance, amounts currently or past due and not paid for taxes and pension obligations and/or contributions.

"Proceeds of Crime Act" shall mean the Proceeds of Crime (Money Laundering) and Terrorist Financing Act (Canada), as amended from time to time, and including all regulations thereunder.

"Process Agent" shall have the meaning assigned to such term in Section 13.08(d).

"Pro Forma Basis" shall mean, as to any person, for any events as described below that occur subsequent to the commencement of a period for which the financial effect of such events is being calculated, and giving effect to the events for which such calculation is being made, such calculation as will give pro forma effect to such events as if such events occurred on the first day of the most recent Test Period ended on or before the occurrence of such event (the "Reference Period"):

(i) the Transactions, any Asset Sale, any asset acquisition or Investment (or series of related Investments), in each case, in excess of $10,000,000, merger, amalgamation, consolidation (or any similar transaction or transactions), any dividend, distribution or other similar payment;

(ii) [reserved]; and

(iii) any incurrence, repayment, repurchase or redemption of Indebtedness (or any issuance, repurchase or redemption of Disqualified Stock or preferred stock), other than fluctuations in revolving borrowings in the ordinary course of business (and not resulting from a transaction as described in clause (i) above).

Pro forma calculations made pursuant to this definition shall be determined in good faith by a Responsible Officer of the Lead Borrower.

If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest on such Indebtedness shall be calculated as if the rate in effect on the date on which the relevant calculation is being made had been the applicable rate for the entire period (taking into account any hedging obligations applicable to such Indebtedness if such hedging obligation has a remaining term in excess of twelve (12) months). Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate reasonably determined by a Financial Officer of the Lead Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP. For purposes of making the computation referred to above, interest on any Indebtedness under a revolving credit facility computed on a pro forma basis shall be computed based upon the average daily balance of such Indebtedness during the applicable period, except to the extent the outstandings thereunder are reasonably expected to increase as a result of any transactions described in clause (i) of the first paragraph of this definition of "Pro Forma Basis" which occurred during the respective period or thereafter and on or prior to the date of determination. Interest on Indebtedness that may optionally be determined at an interest rate based upon a factor of a prime or similar rate, a eurocurrency interbank offered rate, or other rate, shall be deemed to have been based upon the rate actually chosen, or, if none, then based upon such applicable optional rate as the Lead Borrower may designate.

"Pro Rata Percentage" of any Lender at any time shall mean either (i) the percentage of the total Revolving Commitments represented by such Lender's Revolving Commitment, (ii) the percentage of the total North American Revolving Commitments represented by such Lender's North American Revolving Commitment, (iii) the percentage of the total Swiss Revolving Commitments represented by such Lender's Swiss Revolving Commitment or (iv) the percentage of the total outstanding principal amount of the DIP Term Loans represented by such Lender's DIP Term Loans, as applicable.

"Pro Rata Share" shall mean, with respect to each Lender at any time, either (i) a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Aggregate Exposure of such Lender at such time and the denominator of which is the aggregate amount of all Aggregate Exposures at such time, (ii) a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the North American Revolving Exposure of such Lender at such time and the denominator of which is the aggregate amount of all North American Revolving Exposures at such time or (iii) a fraction (expressed as a percentage, carried out to the ninth decimal place), the numerator of which is the amount of the Swiss Revolving Exposure of such Lender at such time and

the denominator of which is the aggregate amount of all Swiss Revolving Exposures at such time, as applicable.

"Projections" shall mean any projections and any forward-looking statements (including statements with respect to booked business) of the Lead Borrower and the Subsidiaries furnished to the Lenders or the Administrative Agent by or on behalf of the Lead Borrower or any of the Subsidiaries prior to the DIP Closing Date.

"Properly Contested" with respect to any obligation of a Loan Party, (a) the obligation is subject to a bona fide dispute regarding amount or the Loan Party's liability to pay; (b) the obligation is being properly contested in good faith by appropriate action; (c) appropriate reserves have been established in accordance with GAAP; (d) non-payment would not reasonably be expected to have a Material Adverse Effect, nor result in forfeiture or sale of any assets of the Loan Party; (e) no Lien is imposed with respect thereto on assets of the Loan Party, unless bonded and stayed to the reasonable satisfaction of the Administrative Agent; and (f) if the obligation results from entry of a judgment or other order, such judgment or order is stayed pending appeal or other judicial review.

"PTE" shall mean a prohibited transaction class exemption issued by the U.S. Department of Labor, as any such exemption may be amended from time to time.

"Public-Sider" shall mean a Lender whose representatives may trade in securities of the Lead Borrower or its Controlling person or any of its subsidiaries while in possession of the financial statements provided by the Lead Borrower under the terms of this Agreement.

"Purchase Obligations" shall mean all Obligations that would be required to achieve Full Senior Obligation Repayment.

"Purchase Price" shall mean an amount that would cause the Revolving Lenders to receive an amount that they would receive upon Full Senior Obligation Repayment.

"Qualified Equity Interests" shall mean any Equity Interest other than Disqualified Stock.

"Qualified Sale" shall mean (x) any sale pursuant to the Qualified Sale Order or (y) any other sale, disposition, transfer or plan that provides for a cash purchase price payable at closing of the transaction of not less than $550,000,000 (net of any hold-backs, escrows or adjustments to be made prior to the closing of such sale, disposition, transfer or plan) and the proceeds of which shall be sufficient to result in the occurrence of the Termination Date and is otherwise on terms and conditions, and subject to definitive documentation, substantially similar or more favorable to the Debtors and the Lenders as a sale contemplated under the Qualified Sale Order.

"Qualified Sale Documentation" shall mean (x) the Stalking Horse APA, including any definitive documentation related thereto and all annexes, exhibits, schedules thereof and (y) any definitive documentation, including any purchase agreement and all annexes, exhibits, schedules thereof, in respect of or relating to a Qualified Sale.

"Qualified Sale Order" shall mean an order of the Bankruptcy Court, reasonably satisfactory to the Administrative Agent, approving the sale of substantially all of the Debtors' assets (including, without limitation, the Equity Interests of one or more of the Debtors' direct or indirect subsidiaries and/or certain joint venture equity interests held by the Debtors) free and clear of all liens and security interests in accordance with section 363 of the Bankruptcy Code to the Stalking Horse Bidder or any other entity approved by the Administrative Agent (or such Stalking Horse Bidder's or other entity's controlled affiliate),

which order shall be in full force and effect, shall not have been vacated or reversed, shall not be subject to a stay, shall not have been amended, supplemented or otherwise modified in any manner that could reasonably be expected to materially adversely affect the interests of the Administrative Agent, the Lead Arrangers or the Lenders.

"QFC" shall have the meaning assigned to the term "qualified financial contract" in, and shall be interpreted in accordance with, 12 U.S.C. 5390(c)(8)(D).

"QFC Credit Support" shall have the meaning assigned to such term in Section 13.21.

"Qualified Reinstated Prepetition Obligations" shall mean that portion of the Reinstated Prepetition Obligations that if repaid in accordance with Section 11.02 of the Credit Agreement does not (i) reduce the amount or change the priority of the DIP Term Obligations, (ii) obligate any DIP Term Lender or the Loan Parties to pay any other prepetition claim against the Debtors, or (iii) otherwise prejudice or impair the DIP Term Obligations or the rights, remedies and privileges of the DIP Term Lenders under the Loans Documents and the Applicable DIP Order.

"Quotation Day" shall mean, with respect to any LIBO Rate Loan and any Interest Period, the Business Day that is generally treated as the rate fixing day by market practice in the applicable interbank market, as reasonably determined by the Administrative Agent.

"Real Property" shall mean, collectively, all right, title and interest (including any leasehold estate) in and to any and all parcels of or interests in real property owned in fee simple or leased by any Loan Party, whether by lease, license or other means, together with, in each case, all easements, hereditaments and appurtenances relating thereto, all improvements and appurtenant fixtures and equipment, incidental to the ownership, lease or operation thereof.

"Real Property Amortization Factor" shall mean, with respect to any Eligible Real Property on any date of determination, 1 minus a fraction, the numerator of which is the number of full fiscal quarters of the Lead Borrower elapsed as of such date (including any such fiscal quarter ending on such date) since December 31, 2019 and the denominator of which is 60.

"Recipient" shall have the meaning assigned to such term in the definition of "Excluded Taxes", unless otherwise specified.

"Reference Period" shall have the meaning assigned to such term in the definition of the term "Pro Forma Basis".

"Register" shall have the meaning assigned to such term in Section 13.04(b)(iv).

"Regulation" shall have the meaning assigned to such term in Section 8.27.

"Regulation D" shall mean Regulation D of the Board of Governors of the Federal Reserve System as from time to time in effect and any successor to all or a portion thereof establishing reserve requirements.

"Regulation T" shall mean Regulation T of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation U" shall mean Regulation U of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Regulation X" shall mean Regulation X of the Board as from time to time in effect and all official rulings and interpretations thereunder or thereof.

"Reinstated Prepetition Obligations" shall mean reinstated Prepetition Obligations equal to the aggregate amount of repayments of Prepetition Obligations on or after the Petition Date that are disgorged and returned to the Debtors pursuant to a final, non-appealable order of the Bankruptcy Court as a direct result of a successful "Challenge" (as defined in the Applicable DIP Order) to the Prepetition Obligations, or the liens securing such obligations, made in accordance with the Applicable DIP Order.

"Related Party" shall mean with respect to any Agent, such Agent's Affiliates and the respective directors, officers, employees, agents and advisors of such Agent and such Agent's Affiliates.

"Release" shall mean any spilling, leaking, seepage, pumping, pouring, emitting, emptying, discharging, injecting, escaping, leaching, dumping, disposing, depositing, emanating or migrating in, into, onto or through the Environment.

"Releasees" shall have the meaning assigned to such term in Section 14.02(a).

"Releasors" shall have the meaning assigned to such term in Section 14.02(a).

"Relevant Entities" shall have the meaning assigned to such term in the last paragraph of Section 9.04.

"Replaced Lender" shall have the meaning assigned to such term in Section 3.04.

"Replacement Lender" shall have the meaning assigned to such term in Section 3.04.

"Reportable Event" shall mean any reportable event as defined in Section 4043(c) of ERISA or the regulations issued thereunder, other than those events as to which the 30-day notice period referred to in Section 4043(c) of ERISA has been waived, with respect to a Plan (other than a Plan maintained by an ERISA Affiliate that is considered an ERISA Affiliate only pursuant to subsection (m) or (o) of Section 414 of the Code).

"Required Facility Lenders" shall mean (a) with respect to any Facility (other than the DIP Term Facility), Non-Defaulting Lenders, the sum of whose outstanding principal of Commitments under such Facility as of any date of determination represents greater than 50% of the sum of all outstanding principal of Commitments under such Facility of Non-Defaulting Lenders at such time and (b) with respect to the DIP Term Facility, Non-Defaulting Lenders, the sum of whose outstanding principal of DIP Term Loans as of any date of determination represents greater than 50% of the sum of all outstanding principal of DIP Term Loans of Non-Defaulting Lenders at such time.

"Required Lenders" shall mean, at any time, each of, collectively, (a) the Required Revolving Lenders and (b) the Required DIP Term Lenders.

"Required Revolving Lenders" shall mean Revolving Lenders that are Non-Defaulting Lenders, the sum of whose outstanding principal of Revolving Commitments as of any date of determination represents greater than 50% of the sum of all outstanding principal of all Revolving Commitments of Non-Defaulting Lenders at such time.

"Required DIP Term Lenders" shall mean DIP Term Lenders that are Non-Defaulting Lenders, the sum of whose outstanding principal of DIP Term Loans and unfunded DIP Term Commitments as of any

date of determination represents greater than 50% of the sum of all outstanding principal of all DIP Term Loans and unfunded DIP Term Commitments of Non-Defaulting Lenders at such time.

"Requirement of Law" shall mean, as to any person, any law, treaty, rule, regulation, statute, order, ordinance, decree, judgment, consent decree, writ, injunction, settlement agreement or governmental requirement enacted, promulgated or imposed or entered into or agreed by any Governmental Authority, in each case applicable to or binding upon such person or any of its property or assets or to which such person or any of its property or assets is subject.

"Reserves" shall mean, without duplication of any items that are otherwise addressed or excluded through eligibility criteria, such reserves as the Administrative Agent, from time to time determines in its Permitted Discretion, including but not limited to Dilution Reserves, Inventory Reserves, the Canadian Unpaid Supplier Reserve, Landlord Lien Reserves, NMTC Reserves and any Bank Product Reserves and, with respect to the Australian Borrowing Base and the Swiss Borrowing Base, the Priority Payables Reserves, the Carve-Out Reserves, the Prepetition Hedging Reserves, the Liquidity Reserve and/or the Australian Priority Payables Reserve (as applicable) and reserves for VAT.

Notwithstanding anything to the contrary in this Agreement, (i) such Reserves shall not be established or changed except upon not less than three (3) Business Days' prior written notice to the Lead Borrower, which notice shall include a reasonably detailed description of such Reserve being established (during which period (a) the Administrative Agent shall, if requested, discuss any such Reserve or change with the Lead Borrower, (b) the Lead Borrower may take such action as may be required so that the event, condition or matter that is the basis for such Reserve or change thereto no longer exists or exists in a manner that would result in the establishment of a lower Reserve or result in a lesser change thereto, in a manner and to the extent reasonably satisfactory to the Administrative Agent and (c) no Credit Extensions shall be made to the Borrowers if after giving effect to such Credit Extension the Availability Conditions would not be met after taking into account such Reserves), (ii) the amount of any Reserve established by the Administrative Agent, and any change in the amount of any Reserve, shall have a reasonable relationship to the event, condition or other matter that is the basis for such Reserve or such change and (iii) no reserves or changes shall be duplicative of reserves or changes already accounted for through eligibility criteria. Notwithstanding clause (i) of the preceding sentence, changes to the Reserves solely for purposes of correcting mathematical or clerical errors shall not be subject to such notice period.

"Responsible Officer" shall mean, with respect to any Person, its chief financial officer, chief executive officer, president, or any vice president, managing director, member of the management board, director, company secretary, treasurer, controller or other officer of such Person having substantially the same authority and responsibility and, solely for purposes of notices given pursuant to Article 2, any other officer or employee of the applicable Loan Party so designated by any of the foregoing officers in a notice to the Administrative Agent or any other officer or employee of the applicable Loan Party designated in or pursuant to an agreement between the applicable Loan Party and the Administrative Agent; provided that, with respect to compliance with financial covenants, "Responsible Officer" shall mean the chief financial officer, treasurer or controller of the Lead Borrower, or any other officer of the Lead Borrower having substantially the same authority and responsibility.

"Restricted Obligations" shall have the meaning assigned to such term in Article 4.

"Restricted Payments" shall have the meaning assigned to such term in Section 10.06. The amount of any Restricted Payment made other than in the form of cash or cash equivalents shall be the Fair Market Value thereof.

"Resolution Authority" means an EEA Resolution Authority or, with respect to any UK Financial Institution, a UK Resolution Authority.

"Reuters" means, as applicable, Thomson Reuters Corp., Refinitiv, or any successor thereto.

"Revaluation Date" shall mean (a) with respect to any Loan, each of the following: (i) each date of a Borrowing of a LIBO Rate Loan, denominated in an Alternative Currency, (ii) each date of a continuation of a LIBO Rate Loan denominated in an Alternative Currency pursuant to Section 2.02, (iii) for purposes of calculating the Unused Line Fee, the last day of any calendar month and (iv) such additional dates as the Administrative Agent shall determine or require in its Permitted Discretion; (b) with respect to any Letter of Credit, each of the following: (i) each date of issuance of a Letter of Credit denominated in an Alternative Currency, (ii) each date of an amendment of any such Letter of Credit having the effect of increasing the amount thereof, (iii) each date of any payment by the applicable Issuing Bank under any Letter of Credit denominated in an Alternative Currency and (iv) for purposes of calculating the Unused Line Fee, the LC Participation Fee and the Fronting Fee, the last day of any calendar month; or (c) with respect to the Swiss Revolving Facility, if required by the Administrative Agent or the Required Facility Lenders, any date on which the Dollar Equivalent of the Outstanding Amount in respect of the Swiss Revolving Facility, as recalculated based on the exchange rate therefor quoted in the Wall Street Journal on the respective date of determination pursuant to this exception, would result in an increase in the Dollar Equivalent of such Outstanding Amount by 5.0% or more since the most recent prior Revaluation Date.

"Revolving Availability Period" shall mean the period from and including the DIP Closing Date to but excluding the earlier of the Maturity Date and the date of termination of the Revolving Commitments.

"Revolving Borrowing" shall mean a North American Revolving Borrowing and/or a Swiss Revolving Borrowing.

"Revolving Commitment" shall mean the North American Revolving Commitment and/or the Swiss Revolving Commitment.

"Revolving Credit Facility Matters" shall mean the matters set forth in or relating to: (a) the definitions of the terms "Aggregate Availability", "Aggregate Borrowing Base", "Availability Conditions", "U.S. Borrowing Base", "Australian Borrowing Base", "Line Cap", "Liquidity Event", "Liquidity Notice", "Liquidity Period", "Swiss Borrowing Base" or "Borrowing Base" or any component definition used therein (including, without limitation, the definitions of "Eligible Accounts", "Eligible Equipment", "Eligible Inventory", "Eligible Real Property" and "Eligible Trademarks") other than the proviso set forth in the definition of "Bank Product Reserve", (b) Sections 9.07(b) (solely as it pertains to the conduction of field exam or appraisals in relation to the assets included in the Borrowing Base) and (c) (solely with respect to the first paragraph), (c) Section 9.18, (d) Section 9.20, (e) the DIP ABL Budget Covenant and (f) any Event of Default arising under Section 11.01(o).

"Revolving Credit Facility Matter Event of Default" shall mean any Event of Default resulting from the breach of the matters set forth in clauses (b) – (e) of the definition of Revolving Credit Facility Matters and any Event of Default resulting from the breach of Section 11.01(o).

"Revolving Exposure" shall mean the North American Revolving Exposure and/or the Swiss Revolving Exposure.

"Revolving Lenders" shall mean each Lender that has a North American Revolving Commitment, North American Revolving Loans, a Swiss Revolving Commitment or Swiss Revolving Loans at such time.

"Revolving Loans" shall mean the North American Revolving Loans and/or the Swiss Revolving Loans.

"S&P" shall mean S&P Global Ratings (or an applicable foreign Affiliate thereof) or any successor thereto.

"Sanctioned Person" shall mean, at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by an authority, institution or agency identified in the definition of "Sanctions", (b) any Person operating, organized or resident in a Designated Jurisdiction, in each case to the extent such Person is a target of Sanctions or (c) any Person more than 50% owned or controlled by any such Person or Persons described in the foregoing clause (a) or (b) or the government of a Designated Jurisdiction.

"Sanctions" shall mean any international economic sanctions administered or enforced by (a) the U.S. government, including those administered by the U.S. Department of the Treasury's Office of Foreign Assets Control or the U.S. Department of State, (b) the United Nations Security Council, (c) the European Union or any European Union member state, (d) the governmental institutions and agencies of the United Kingdom, including without limitation, Her Majesty's Treasury (UK), (e) the federal government of Canada, including pursuant to Canadian Economic Sanctions and Export Control Laws, or (f) any other relevant sanctions authority with jurisdiction over any Loan Party.

"Secured Bank Product Obligations" shall mean Bank Product Debt owing to a Secured Bank Product Provider or any Person that was a Secured Bank Product Provider on the DIP Closing Date or at the time it entered into a Bank Product with a Borrower or its Subsidiary, up to the maximum amount specified by such provider in writing to the Administrative Agent, the Lead Borrower and the DIP Term Lender Notice Office on and after the DIP Closing Date, which amount may be established or increased (by further written notice by the Lead Borrower or such provider to the Administrative Agent, the Lead Borrower and the DIP Term Lender Notice Office from time to time) as long as no Default or Event of Default then exists. For the avoidance of doubt, Secured Bank Product Obligations (as defined in the Prepetition Credit Agreement) in respect of Swap Contracts entered into by a Foreign Subsidiary as in existence on the DIP Closing Date shall, subject to the notices specified above, also constitute Secured Bank Product Obligations under this Agreement.

"Secured Bank Product Provider" shall mean, at the time of entry into a Bank Product with a Borrower or its Subsidiary (or, if such Bank Product exists on the DIP Closing Date, as of the DIP Closing Date) the Administrative Agent, any Lender or any of their respective Affiliates that is providing a Bank Product; provided that such provider delivers written notice to the Administrative Agent and the DIP Term Lender Notice Office, substantially in the form of Exhibit D hereto (i) describing the Bank Product and setting forth the maximum amount to be secured by the Collateral, and (ii) agreeing to be bound by Section 12.12.

"Secured Parties" shall mean, collectively, the Administrative Agent, the Collateral Agent, the Australian Security Trustee, each Lender, each Issuing Bank, each Secured Bank Product Provider that is owed Secured Bank Product Obligations and each sub-agent appointed pursuant to Section 12.01 by the Administrative Agent with respect to matters relating to the Loan Documents or by the Collateral Agent with respect to matters relating to any Security Document.

"Securities Act" shall mean the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"Securities Account" shall have the meaning assigned to such term in Article 8 of the UCC or, if applicable, in the Canadian PPSA.

"Security Document" shall mean and include each U.S. Security Document and each Non-U.S. Security Document. For the avoidance of doubt, upon the expiration or termination of any such U.S. Security Document or Non-U.S. Security Document in accordance with its terms (including, without limitation, in connection with the release of a Loan Party in accordance with the Loan Documents), such document shall cease to constitute a "Security Document".

"Settlement Date" shall have the meaning assigned to such term in Section 2.14(b).

"Similar Business" shall mean (i) any business the majority of whose revenues are derived from business or activities conducted by the Lead Borrower and its Subsidiaries on the DIP Closing Date, (ii) any business that is a natural outgrowth or reasonable extension, development or expansion of any such business or any business similar, reasonably related, incidental, complementary or ancillary to any of the foregoing or (iii) any business that in the Lead Borrower's good faith business judgment constitutes a reasonable diversification of businesses conducted by the Lead Borrower and its Subsidiaries.

"Special Flood Hazard Area" shall have the meaning assigned to such term in Section 9.02(c).

"Specified Defaults" shall have the meaning assigned to such term in Section 14.01(a).

"Specified Disclosure Exceptions" shall have the meaning assigned to such term in Section 9.07(d)(ii).

"Specified Foreign Laws" shall mean the laws of any Specified Jurisdiction.

"Specified Jurisdiction" shall mean each of the United States, any State thereof or the District of Columbia, Australia, Canada (including any province or territory thereof), the Netherlands, Switzerland and each jurisdiction of a Foreign Subsidiary that has become a Guarantor pursuant to clause (ii) of Section 9.10(d).

"Spot Rate" shall mean the exchange rate, as reasonably determined by the Administrative Agent, that is applicable to conversion of one currency into another currency, which is (a) the exchange rate reported by Bloomberg (or other commercially available source reasonably designated by the Administrative Agent) as of the end of the preceding Business Day in the financial market for the first currency; or (b) if such report is unavailable for any reason, the spot rate for the purchase of the first currency with the second currency as in effect during the preceding Business Day in the Administrative Agent's principal foreign exchange trading office for the first currency.

"Stalking Horse APA" shall have the meaning assigned to such term in Section 6.01(u).

"Stalking Horse Bidder" shall mean BUCEPHALUS Buyer, LLC.

"subsidiary" shall mean, with respect to any person (referred to in this definition as the "parent"), any corporation, limited liability company, partnership, association or other business entity (a) of which securities or other ownership interests representing more than 50% of the equity or more than 50% of the ordinary voting power or more than 50% of the general partnership interests are, at the time any determination is being made, directly or indirectly, owned, Controlled or held, or (b) that is, at the time any determination is made, otherwise Controlled, by the parent or one or more subsidiaries of the parent or by

the parent and one or more subsidiaries of the parent. In addition, any joint venture owned by any person which is consolidated with such person pursuant to GAAP shall be a "subsidiary" of such person.

"Subsidiary" shall mean, unless the context otherwise requires, a subsidiary of the Lead Borrower.

"Subsidiary Borrower" shall mean, subject to Section 13.18(b)(2), each U.S. Subsidiary Borrower and the Swiss Borrower.

"Supermajority Lenders" shall mean Revolving Lenders that are Non-Defaulting Lenders, the sum of whose outstanding principal of Revolving Commitments as of any date of determination represents greater than 66 2/3% of the sum of the outstanding principal of all Revolving Commitments of Revolving Lenders that are Non-Defaulting Lenders at such time.

"Superpriority Claim" shall mean a claim against a Debtor in any of the Chapter 11 Cases that is a superpriority administrative expense claim having priority over any or all administrative expenses and other claims of the kind specified in, or otherwise arising or ordered under, any sections of the Bankruptcy Code (including, without limitation, sections 105, 326, 328, 330, 331, 503(b), 507(a), 507(b), 546(c) and/or 726 thereof), whether or not such claim or expenses may become secured by a judgment Lien or other non-consensual Lien, levy or attachment.

"Supply Chain Financing" shall mean any agreement to provide to the Lead Borrower or any Subsidiary letters of credit, guarantees or other credit support provided in respect of trade payables of the Lead Borrower or any Subsidiary, in each case issued for the benefit of any bank, financial institution or other person that has acquired such trade payables pursuant to "supply chain" or other similar financing for vendors and suppliers, including tooling vendors, of the Lead Borrower or any Subsidiaries, so long as (i) such Indebtedness is unsecured, (ii) the terms of such trade payables shall not have been extended in connection with the Supply Chain Financing and (iii) such Indebtedness represents amounts not in excess of those which the Lead Borrower or any of its Subsidiaries would otherwise have been obligated to pay to its vendor or supplier in respect of the applicable trade payables.

"Supported QFC" shall have the meaning assigned to such term in Section 13.21.

"Swap Contract" shall mean (a) any and all rate swap transactions, basis swaps, credit derivative transactions, forward rate transactions, commodity swaps, commodity options, forward commodity contracts, equity or equity index swaps or options, bond or bond price or bond index swaps or options or forward bond or forward bond price or forward bond index transactions, interest rate options, forward foreign exchange transactions, cap transactions, floor transactions, collar transactions, currency swap transactions, cross-currency rate swap transactions, currency options, spot contracts, or any other similar transactions or any combination of any of the foregoing (including any options to enter into any of the foregoing), whether or not any such transaction is governed by or subject to any master agreement, and (b) any and all transactions of any kind, and the related confirmations, which are subject to the terms and conditions of, or governed by, any form of master agreement published by the International Swaps and Derivatives Association, Inc., any International Foreign Exchange Master Agreement, or any other master agreement (any such master agreement, together with any related schedules, a "Master Agreement"), including any such obligations or liabilities under any Master Agreement.

"Swap Obligation" shall mean, with respect to any Guarantor, any obligation to pay or perform under any agreement, contract or transaction that constitutes a "swap" within the meaning of section 1a(47) of the Commodity Exchange Act.

"Swingline Borrowing" shall mean a borrowing of a Swingline Loan.

"Swingline Commitment" shall mean the commitment of the Swingline Lender to make loans pursuant to Section 2.12, as the same may be reduced from time to time pursuant to Section 2.07 or Section 2.12.

"Swingline Exposure" shall mean at any time the aggregate principal amount at such time of all outstanding Swingline Loans. The Swingline Exposure of any Revolving Lender at any time shall equal its Pro Rata Percentage (with respect to the applicable Facility) of the aggregate Swingline Exposure at such time.

"Swingline Lender" shall mean JPMCB, in its capacity as lender of Swingline Loans, and shall include its branch offices and affiliates in any applicable jurisdiction and any successor to the Swingline Lender appointed pursuant to Section 12.10.

"Swingline Loans" shall have the meaning assigned to such term in Section 2.12(a).

"Swiss Bank Account Claims Assignment Agreement" shall mean the Swiss law governed assignment of bank account claims for security purposes (*Sicherungszession*) of the Swiss Borrower entered into on or about the date of this Agreement by and among Swiss Borrower as assignor and the Collateral Agent.

"Swiss Borrower" shall mean, subject to Section 13.18(b)(2), Briggs & Stratton AG, a Swiss corporation, and, if different, for purposes of Swiss Withholding Tax, a Loan Party that is organized under the laws of Switzerland or which is treated as resident in Switzerland for Swiss Withholding Tax purposes.

"Swiss Borrowing Base" shall mean, at any time of calculation, an amount equal to the sum of, without duplication:

(a) (i) the book value of all Eligible Accounts of the Swiss Borrower owing by an Account Debtor that has an Investment Grade Rating multiplied by the advance rate of 90% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 95%) plus (ii) the book value of all other Eligible Accounts of the Swiss Borrower multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus

(b) the lesser of (i) the Cost of Eligible Inventory of the Swiss Borrower multiplied by the advance rate of 75% and (ii) the Cost of Eligible Inventory of the Swiss Borrower multiplied by the appraised NOLV Percentage of Eligible Inventory of the Swiss Borrower multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); minus

(c) any Reserves pertaining to the Swiss Borrower established from time to time by the Administrative Agent in accordance herewith (without duplication of any Reserves deducted in the calculation of any other Borrowing Base).

"Swiss Claims Assignment Agreement" shall mean the Swiss law governed assignment of receivables for security purposes (*Sicherungszession*) of the Swiss Borrower entered into on or about the date of this Agreement by and among Swiss Borrower as assignor and the Collateral Agent.

"Swiss Federal Tax Administration" shall mean the tax authorities referred to in article 34 of the Swiss Federal Act on Withholding Tax for purposes of any tax imposed pursuant to the Swiss Federal Act

on Withholding Tax (Bundesgesetz über die Verrechnungssteuer vom 13. Oktober 1965, SR 642.21), as amended from time to time, together with the related ordinances, regulations and guidelines.

"Swiss Francs" shall mean the lawful currency of Switzerland.

"Swiss Guarantor" shall mean any Guarantor organized under the laws of Switzerland or, if different, deemed resident in Switzerland for Swiss Withholding Tax purposes.

"Swiss Guarantor Obligations" shall have the meaning assigned to such term in Article 4.

"Swiss Guaranty Limitations" shall have the meaning assigned to such term in Article 4.

"Swiss Guidelines" shall mean, together, the guidelines S-02.123 in relation to interbank loans of 22 September 1986 as issued by the Swiss Federal Tax Administration (Merkblatt S-02.123 vom 22 September 1986 betreffend Zinsen von Bankguthaben, deren Gläubiger Banken sind Interbankguthaben)), S-02.130.1 in relation to money market instruments and accounts receivable of April 1999 (Merkblatt S-02.130.1 vom April 1999 "Geldmarktpapiere und Buchforderungen inländischer Schuldner"), the circular letter No. 15 (1-015-DVS-2017) of 3 October 2017 in relation to bonds and derivative financial instruments as subject matter of taxation of Swiss federal income tax, Swiss withholding tax and Swiss stamp taxes (Kreisschreiben Nr. 15 "Obligationen und derivative Finanzinstrumente als Gegenstand der direkten Bundessteuer, der Verrechnungssteuer und der Stempelabgaben" vom 3. Oktober 2017) and the circular letter No. 34 of 26 July 2011 (1-034-V-2011) in relation to customer credit balances (Kreisschreiben Nr. 34 "Kundenguthaben" vom 26. Juli 2011) and the practice note 010-DVS-2019 dated 5 February 2019 published by the Swiss Federal Tax Administration regarding Swiss Withholding Tax in the Group (Mitteilung-010-DVS-2019-d vom 5. Februar 2019 - Verrechnungssteuer: Guthaben im Konzern), the circular letter No. 46 of 24 July 2019 (1-046-VS-2019) in relation to syndicated credit facilities, promissory note loans, bills of exchange and subparticipations (Kreisschreiben Nr. 46 vom 24. Juli 2019 betreffend "Steuerliche Behandlung von Konsortialdarlehen, Schuldscheindarlehen, Wechseln und Unterbeteiligungen") and the circular letter No. 47 of 25 July 2019 (1-047-V-2019) in relation to bonds (Kreisschreiben Nr. 47 vom 25. Juli 2019 betreffend "Obligationen") as issued, and as amended or replaced from time to time by the Swiss Federal Tax Administration, or as applied in accordance with a tax ruling (if any) issued by the Swiss Federal Tax Administration, or as substituted or superseded and overruled by any law, statute, ordinance, regulation, court decision or the like as in force from time to time.

"Swiss Issuing Bank" shall mean, as the context may require, (a) JPMCB, with respect to Letters of Credit issued by it, Bank of America, N.A., with respect to Letters of Credit issued by it, Bank of Montreal, with respect to Letters of Credit issued by it and Wells Fargo Bank, National Association, with respect to Letters of Credit issued by it, and (b) any other Revolving Lender that may become a Swiss Issuing Bank pursuant to Sections 2.13(i) and 2.13(k), with respect to Letters of Credit issued by such Revolving Lender; or (c) collectively, all of the foregoing. Each Swiss Issuing Bank may, in its discretion, arrange for one or more Letters of Credit to be issued by affiliates or branches of such Swiss Issuing Bank (including without limitation with respect to Letters of Credit with a co-Applicant that is not a Foreign Loan Party), in which case the term "Swiss Issuing Bank" shall include any such affiliate or branch with respect to Letters of Credit issued by such affiliate or branch.

"Swiss Issuing Bank Sublimit" shall mean (i) with respect to JPMCB, $2,000,000, (ii) with respect to Bank of America, N.A., $0, (iii) with respect to Bank of Montreal, $0, (iv) with respect to Wells Fargo Bank, National Association, $0 and (v) with respect to each other Swiss Issuing Bank, such amount as may be agreed among the Lead Borrower and such other Swiss Issuing Bank (and notified to the Administrative Agent) at the time such other Swiss Issuing Bank becomes a Swiss Issuing Bank. The Swiss Issuing Bank Sublimit of any Swiss Issuing Bank may be increased or decreased as agreed by such Swiss Issuing Bank

and the Lead Borrower (each acting in their sole discretion) and notified in a writing executed by such Swiss Issuing Bank and the Lead Borrower.

"Swiss LC Commitment" shall mean the commitment of each Swiss Issuing Bank to issue Letters of Credit under the Swiss Revolving Facility pursuant to Section 2.13.

"Swiss LC Disbursement" shall mean a payment or disbursement made by any Swiss Issuing Bank pursuant to a Swiss Letter of Credit under the Swiss Revolving Facility.

"Swiss LC Exposure" shall mean at any time the sum of (a) the aggregate undrawn amount of all outstanding Swiss Letters of Credit at such time *plus* (b) the aggregate principal amount of all Swiss LC Disbursements that have not yet been reimbursed at such time. The Swiss LC Exposure of any Revolving Lender at any time shall mean its Pro Rata Percentage (with respect to the Swiss Revolving Facility) of the aggregate Swiss LC Exposure at such time.

"Swiss LC Obligations" shall mean the sum (without duplication) of (a) all amounts owing by the Borrowers for any drawings under Swiss Letters of Credit (including any bankers' acceptances or other payment obligations arising therefrom); and (b) the stated amount of all outstanding Swiss Letters of Credit.

"Swiss LC Sublimit" shall have the meaning assigned to such term in Section 2.13(b).

"Swiss Letter of Credit" shall mean any letters of credit issued or to be issued by any Swiss Issuing Bank under the Swiss Revolving Facility for the account of the Swiss Borrower (or any Subsidiary of the Swiss Borrower, with the Swiss Borrower as a co-applicant thereof) pursuant to Section 2.13, including any standby letter of credit, time, or documentary letter of credit or any functional equivalent in the form of an indemnity, or bank guarantee or similar form of credit support issued by the Administrative Agent or a Swiss Issuing Bank for the benefit of the Swiss Borrower.

"Swiss Loan Parties" shall mean, individually and collectively, the Swiss Borrower and each Swiss Subsidiary that is a Swiss Guarantor.

"Swiss Non-Bank Rules" shall mean together the Swiss Twenty Non-Bank Rule and the Swiss Ten Non-Bank Rule.

"Swiss Non-Qualifying Lender" shall mean a person which does not qualify as a Swiss Qualifying Lender.

"Swiss Qualifying Lender" shall mean (i) a bank as defined in the Swiss Federal Code for Banks and Savings Banks dated 8 November 1934 (Bundesgesetz über die Banken und Sparkassen) as amended from time to time or (ii) a person or entity which effectively conducts banking activities with its own infrastructure and staff as its principal business purpose and which has a banking license in full force and effect issued in accordance with the banking laws in force in its jurisdiction of incorporation, or if acting through a branch, issued in accordance with the banking laws in the jurisdiction of such branch, all and in each case in accordance with the Swiss Guidelines.

"Swiss Revolving Borrowing" shall mean a Borrowing comprised of Swiss Revolving Loans.

"Swiss Revolving Commitment" shall mean, with respect to each Revolving Lender, the commitment, if any, of such Revolving Lender to make Swiss Revolving Loans hereunder up to the amount set forth and opposite such Revolving Lender's name on Schedule 2.01 as of the DIP Closing Date and as of the DIP Term Facility Closing Date, subject to adjustments in connection with any assignment after the

DIP Closing Date or the DIP Term Facility Closing Date in accordance with Section 13.04(b), in each case, under the caption "Swiss Revolving Commitment," or in the Assignment and Assumption pursuant to which such Revolving Lender assumed its Swiss Revolving Commitment, as applicable, as the same may be (a) reduced from time to time pursuant to Section 2.07 and (b) reduced or increased from time to time pursuant to assignments by or to such Revolving Lender pursuant to Section 13.04. The aggregate amount of the Revolving Lenders' Swiss Revolving Commitments (x) on the DIP Closing Date is $28,800,000 and (y) subject to reduction as provided in Section 2.07, on the DIP Term Loan Closing Date shall be $28,800,000.

"Swiss Revolving Exposure" shall mean, with respect to any Revolving Lender at any time, the aggregate principal amount at such time of all outstanding Swiss Revolving Loans of such Revolving Lender, plus the aggregate amount of such Revolving Lender's Swingline Exposure under the Swiss Revolving Facility, plus the aggregate amount of such Revolving Lender's Swiss LC Exposure in respect of Letters of Credit issued for the Swiss Borrower.

"Swiss Revolving Facility" shall mean the Swiss Revolving Commitments of the Revolving Lenders and the Loans and Letters of Credit pursuant to those Swiss Revolving Commitments in accordance with the terms hereof.

"Swiss Revolving Lenders" shall mean each Revolving Lender that has a Swiss Revolving Commitment or Swiss Revolving Loans at such time.

"Swiss Revolving Loans" shall mean advances made pursuant to Article 2 hereof under the Swiss Revolving Facility (including, for the avoidance of doubt, any Swiss Swingline Loans).

"Swiss Security Documents" shall mean the Initial Swiss Security Agreements and, after the execution and delivery thereof, each Additional Security Document governed by Swiss law, together with any other applicable security documents governed by Swiss law from time to time in favor of the Collateral Agent for the benefit of the Secured Parties.

"Swiss Share Pledge Agreement" shall mean the Swiss law governed share pledge agreement over the shares of the Swiss Borrower (other than to the extent constituting Excluded Securities) entered into on or about the date of this Agreement by and among the Lead Borrower as pledgor and the Collateral Agent.

"Swiss Subsidiary" shall mean any Subsidiary of the Lead Borrower that is organized under the laws of Switzerland.

"Swiss Swingline Loans" shall have the meaning assigned to such term in Section 2.12(a).

"Swiss Ten Non-Bank Rule" shall mean the rule that the aggregate number of Revolving Lenders other than Swiss Qualifying Lenders of a Swiss Borrower under this Agreement must not at any time exceed ten (10); in each case in accordance with the meaning of the Swiss Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

"Swiss Twenty Non-Bank Rule" shall mean the rule that (without duplication) the aggregate number of creditors other than Swiss Qualifying Lenders of a Swiss Borrower under all its outstanding debts relevant for the classification as debentures (Kassenobligation) (including debt arising under this Agreement, intragroup loans (if and to the extent intragroup loans are not exempt in accordance with art. 14a Swiss Federal Ordinance on withholding tax), facilities and/or private placements), must not at any time exceed twenty (20), in each case in accordance with the meaning of the Swiss Guidelines or the applicable legislation or explanatory notes addressing the same issues that are in force at such time.

"Swiss Withholding Tax" shall mean any Taxes levied pursuant to the Swiss Federal Act on Withholding Tax (Bundesgesetz über die Verrechnungssteuer vom 13. Oktober 1965, SR 642.21), as amended from time to time together with the related ordinances, regulations and guidelines.

"TARGET2" shall mean the Trans-European Automated Real-time Gross Settlement Express Transfer payment system which utilizes a single shared platform and which was launched on 19 November 2007.

"Taxes" shall mean all present or future taxes, duties, levies, imposts, assessments, deductions, withholdings (including backup withholdings), value added taxes, or any other goods and services, use or sales taxes, or other similar fees or charges, imposed by any Governmental Authority, whether computed on a separate, consolidated, unitary, combined or other basis and any interest, fines, penalties or additions to tax with respect to the foregoing.

"Termination Date" shall mean the date on which (a) all Aggregate Revolving Commitments and DIP Term Commitments shall have been terminated, (b) all Letters of Credit shall have expired or terminated, been Cash Collateralized (or, if agreed by the applicable Issuing Bank, pursuant to any backstop or other arrangement acceptable to such Issuing Bank) and (c) the principal of and interest on each Loan, all Obligations, fees and all other expenses or amounts shall have been indefeasibly paid in full in cash (other than in respect of contingent indemnification and expense reimbursement claims not then due, Cash Collateralized Letters of Credit and Secured Bank Product Obligations except to the extent then due and payable and then entitled to payment in accordance with Section 11.02).

"Termination Event" shall have the meaning assigned to such term in Section 14.01(c).

"Test Period" shall mean, on any date of determination, the period of four consecutive fiscal quarters of the Lead Borrower then most recently ended (taken as one accounting period) for which financial statements have been (or were required to be) delivered pursuant to Section 9.04(a) or 9.04(b); provided that prior to the first date financial statements have been delivered pursuant to Section 9.04(a) or 9.04(b), the Test Period in effect shall be the most recently ended full four fiscal quarter period prior to the DIP Closing Date for which financial statements would have been required to be delivered hereunder had the DIP Closing Date occurred prior to the end of such period.

"Third Party Funds" shall mean any accounts or funds, or any portion thereof, received by the Lead Borrower or any Subsidiary as agent on behalf of third parties in accordance with a written agreement that imposes a duty upon the Lead Borrower or one or more of Subsidiaries to collect and remit those funds to such third parties.

"Title Insurer" shall have the meaning assigned to such term in the definition of the term "Mortgage Policy".

"Trademark Amortization Factor" shall mean, with respect to any Eligible Trademarks on any date of determination, 1 minus a fraction, the numerator of which is the number of full fiscal quarters of the Lead Borrower elapsed as of such date (including any such fiscal quarter ending on such date) since December 31, 2019 and the denominator of which is 20.

"Trademarks" shall mean all of the following: (a) all trademarks, trade names, corporate names, business names, trade styles, service marks, logos, other source or business identifiers, prints and labels on which any of the foregoing have appeared or appear, designs and general intangibles of like nature (whether registered or unregistered), all registrations and recordings thereof, and all applications in connection therewith, including registrations, recordings and applications in the United States Patent and Trademark

Office or in any similar office or agency of the United States, any state or territory thereof, or any other country or any political subdivision thereof; (b) all reissues, extensions or renewals thereof; and (c) all goodwill associated with or symbolized by any of the foregoing.

"Transaction Expenses" shall have the meaning assigned to such term in the definition of "Transactions."

"Transactions" shall mean, collectively, (i) the entering into of the Loan Documents on or after the Petition Date and, the borrowing under this Agreement and the issuance of the Letters of Credit from time to time, (ii) the transactions to be consummated pursuant to a Qualified Sale, (iii) the payment of all fees and expenses in connection herewith or therewith to be paid on, prior to or subsequent to the Petition Date (the "Transaction Expenses"), (iv) the Prepetition Obligations Refinancing and (v) the other transactions consummated in connection herewith or therewith.

"Type" shall mean the type of Loan determined with regard to the interest option applicable thereto, i.e., whether a Base Rate Loan or a LIBO Rate Loan.

"UK Financial Institutions" means any BRRD Undertaking (as such term is defined under the PRA Rulebook (as amended form time to time) promulgated by the United Kingdom Prudential Regulation Authority) or any person falling within IFPRU 11.6 of the FCA Handbook (as amended from time to time) promulgated by the United Kingdom Financial Conduct Authority, which includes certain credit institutions and investment firms, and certain affiliates of such credit institutions or investment firms.

"UK Resolution Authority" means the Bank of England or any other public administrative authority having responsibility for the resolution of any UK Financial Institution.

"Undisclosed Administration" shall mean, in relation to a Lender or its direct or indirect parent company, the appointment of an administrator, provisional liquidator, conservator, receiver, trustee, custodian or other similar official by a supervisory authority or regulator under or based on the law in the country where such Lender or such parent company is subject to home jurisdiction supervision if applicable law requires that such appointment is not to be publicly disclosed.

"Uniform Commercial Code" or "UCC" shall mean the Uniform Commercial Code as the same may from time to time be in effect in the State of New York or the Uniform Commercial Code (or similar code or statute) of another jurisdiction, to the extent it may be required to apply to any item or items of Collateral.

"United States" and "U.S." shall each mean the United States of America.

"Unused Line Fee" shall have the meaning assigned to such term in Section 2.05(a).

"Unused Line Fee Rate" shall mean, with respect to any Facility (other than the DIP Term Facility), 0.25% per annum on the average daily amount by which the Commitments under such Facility exceed the Revolving Exposure of all Lenders under such Facility, in each case, calculated based upon the actual number of days elapsed over a 360-day year payable monthly in arrears.

"U.S. Borrowers" shall mean (i) the Lead Borrower and (ii) any U.S. Subsidiary Borrower.

"U.S. Borrowing Base" shall mean, at any time of calculation, an amount equal to the sum of, without duplication:

(a) (i) the book value of all Eligible Accounts of the U.S. Loan Parties owing by an Account Debtor that has an Investment Grade Rating multiplied by the advance rate of 90% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 95%) plus (ii) the book value of all other Eligible Accounts of the U.S. Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus

(b) the lesser of (i) the Cost of Eligible Inventory of the U.S. Loan Parties multiplied by the advance rate of 75% and (ii) the Cost of Eligible Inventory of the U.S. Loan Parties multiplied by the appraised NOLV Percentage of Eligible Inventory of the U.S. Loan Parties multiplied by the advance rate of 85% (or, for the period commencing on July 15 of each calendar year and ending on the last day of the fiscal month ending on or about the last day of February the following calendar year, 90%); plus

(c) solely during the Interim Period, the U.S. Fixed Asset Advance; minus

(d) any Reserves pertaining to the U.S. Loan Parties established from time to time by the Administrative Agent in accordance herewith (without duplication of any Reserves deducted in the calculation of any other Borrowing Base);

provided that in no event shall the U.S. Fixed Asset Advance exceed $150,000,000 at any time.

"U.S. Collateral" shall mean all property (whether real, personal or otherwise) with respect to which any security interests have been granted (or purported to be granted) pursuant to any U.S. Security Document (including any Additional Security Documents but excluding the Non-U.S. Security Documents) or will be granted in accordance with requirements set forth in Section 9.12, including, without limitation, all collateral as described in the U.S. Security Agreement and all Mortgaged Properties. For the avoidance of doubt, in no event shall U.S. Collateral include Excluded Property.

"U.S. Dollars" and the sign "$" shall each mean freely transferable lawful money (expressed in dollars) of the United States.

"U.S. Fixed Asset Advance" shall mean, at any time of calculation, an amount equal to the sum of, without duplication:

(i) the applicable Equipment Amortization Factor for Eligible Equipment of the U.S. Loan Parties multiplied by 85% of the NOLV Percentage of such Eligible Equipment; plus

(ii) the applicable Real Property Amortization Factor for Eligible Real Property of the U.S. Loan Parties multiplied by 75% of the fair market value of such Eligible Real Property, determined based on the most recent real estate appraisal completed by the Administrative Agent in accordance with Section 9.07(b); plus

(iii) the applicable Trademark Amortization Factor for Eligible Trademarks of the U.S. Loan Parties and the Australian Loan Parties multiplied by 50% of the NOLV Percentage of such Eligible Trademarks.

"U.S. Lender" shall mean a Lender that is not a Non-U.S. Lender.

"U.S. Loan Party" shall mean each U.S. Borrower and each Guarantor that is a U.S. Subsidiary.

"U.S. Person" shall mean any person that is a "United States Person" as defined in Section 7701(a)(30) of the Code.

"U.S. Pledged Collateral" shall have the meaning assigned to such term in the Initial U.S. Security Agreement.

"U.S. Security Documents" shall mean the Initial U.S. Security Agreement, each Deposit Account Control Agreement of a U.S. Loan Party or governed by U.S. law, each Mortgage and, after the execution and delivery thereof, each Additional Security Document of a U.S. Loan Party, together with any other applicable security documents governed by U.S. law from time to time in favor of the Collateral Agent for the benefit of the Secured Parties.

"U.S. Special Resolution Regime" shall have the meaning assigned to such term in Section 13.21.

"U.S. Subsidiary" shall mean, as to any Person, any Subsidiary of such Person that is incorporated, formed or otherwise organized under the laws of the United States, any state thereof or the District of Columbia.

"U.S. Subsidiary Borrower" shall mean, subject to Section 13.18(b)(2), each U.S. Subsidiary of the Lead Borrower that is on the DIP Closing Date, or which becomes, a party to this Agreement in accordance with the requirements of this Agreement, in each case, to the extent approved by the Administrative Agent and each of the Revolving Lenders.

"U.S. Tax Compliance Certificate" shall have the meaning assigned to such term in Section 5.01(e)(ii)(3).

"VAT" shall mean (a) any tax imposed in compliance with the Council Directive of 28 November 2006 on the common system of value added tax (EC Directive 2006/112); and (b) any other tax of a similar nature, whether imposed in a member state of the European Union in substitution for, or levied in addition to, such tax referred to in clause (a) above, or imposed elsewhere (including, without limitation, Australian GST) and any tax imposed in compliance with the Swiss Federal Act on Value Added Tax of 12 June 2009 as amended from time to time.

"Weekly Monitoring Period" shall mean (a) the Interim Period, and (b) any other period of time, at the election of the Administrative Agent or at the direction of the Required Revolving Lenders, (i) when an Event of Default has occurred and is continuing, or (ii) commencing with the date on which Aggregate Availability is less than the greater of (x) 10.0% of the Line Cap and (y) $40,000,000 for a period of five (5) consecutive Business Days and continuing until such subsequent date as when Aggregate Availability shall have been at least equal to the greater of (x) 10.0% of the Line Cap and (y) $40,000,000 for thirty (30) consecutive calendar days.

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

"Wholly Owned Subsidiary" of any person shall mean a subsidiary of such person, all of the Equity Interests of which (other than directors' qualifying shares or nominee or other similar shares required pursuant to applicable law) are owned by such person or another Wholly Owned Subsidiary of such person.

Unless the context otherwise requires, "Wholly Owned Subsidiary" shall mean a Subsidiary of the Lead Borrower that is a Wholly Owned Subsidiary of the Lead Borrower.

"Withdrawal Liability" shall mean liability to a Multiemployer Plan as a result of a complete or partial withdrawal from such Multiemployer Plan, as such terms are defined in Part I of Subtitle E of Title IV of ERISA.

"Write-Down and Conversion Powers" means, (a) with respect to any EEA Resolution Authority, the write-down and conversion powers of such EEA Resolution Authority from time to time under the Bail-In Legislation for the applicable EEA Member Country, which write-down and conversion powers are described in the EU Bail-In Legislation Schedule, and (b) with respect to the United Kingdom, any powers of the applicable Resolution Authority under the Bail-In Legislation to cancel, reduce, modify or change the form of a liability of any UK Financial Institution or any contract or instrument under which that liability arises, to convert all or part of that liability into shares, securities or obligations of that person or any other person, to provide that any such contract or instrument is to have effect as if a right had been exercised under it or to suspend any obligation in respect of that liability or any of the powers under that Bail-In Legislation that are related to or ancillary to any of those powers.

Section 1.02 Terms Generally and Certain Interpretive Provisions. The definitions set forth or referred to in Section 1.01 shall apply equally to both the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include," "includes" and "including" shall be deemed to be followed by the phrase "without limitation." All references herein to Articles, Sections, Exhibits and Schedules shall be deemed references to Articles and Sections of, and Exhibits and Schedules to, this Agreement unless the context shall otherwise require. Except as otherwise expressly provided herein, any reference in this Agreement to any Loan Document shall mean such document as amended, restated, amended and restated, supplemented or otherwise modified from time to time. Unless the context requires otherwise, (a) any definition of or reference to any agreement, instrument or other document in any Loan Document shall be construed as referring to such agreement, instrument or other document as from time to time amended, restated, supplemented and/or otherwise modified (subject to any restrictions on such amendments, restatements, supplements or modifications set forth in the Loan Documents), (b) any definition of or reference to any statute, rule or regulation in any Loan Document shall be construed as referring thereto as from time to time amended, supplemented and/or otherwise modified (including by succession of comparable successor laws), (c) any reference in any Loan Document to any Person shall be construed to include such Person's successors and assigns (subject to any restrictions on assignment set forth in the Loan Documents) and, in the case of any Governmental Authority, any other Governmental Authority that shall have succeeded to any or all functions thereof and (d) the words "herein", "hereof" and "hereunder", and words of similar import, shall be construed to refer to this Agreement in its entirety and not to any particular provision hereof. Except as otherwise expressly provided herein (including, for the avoidance of doubt, the proviso in the definition of "Capitalized Lease Obligations"), all terms of an accounting or financial nature shall be construed in accordance with GAAP, as in effect from time to time; provided that, if, at any time, any change in GAAP or in the application thereof would affect the computation of any requirement in the Loan Documents and the Lead Borrower notifies the Administrative Agent that the Borrowers request an amendment (or if the Administrative Agent notifies the Lead Borrower that the Required Lenders request an amendment), the Administrative Agent, the Lenders and the Borrowers shall, at no cost to the Borrowers, negotiate in good faith to amend such requirement to preserve the original intent thereof in light of such change in GAAP or in the application thereof (subject to the approval of the Required Lenders), regardless of whether any such notice is given before or after such change in GAAP or in the application thereof, and such requirement shall be interpreted on the basis of GAAP without giving effect to such change until such provision is amended in accordance herewith. Notwithstanding any other provision contained herein, all terms of an accounting or financial nature used herein shall be construed, and all computations of amounts

referred to herein shall be made (i) without giving effect to any election under Accounting Standards Codification 825-10-25 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any Indebtedness or other liabilities of the Lead Borrower or any Subsidiary at "fair value," as defined therein, (ii) without giving effect to any treatment of Indebtedness in respect of convertible debt instruments under Accounting Standards Codification 470-20 (or any other Accounting Standards Codification or Financial Accounting Standard having a similar result or effect) to value any such Indebtedness in a reduced or bifurcated manner as described therein, and such Indebtedness shall at all times be valued at the full stated principal amount thereof, (iii) without giving effect to any change to, or modification of, GAAP (including any future phase-in of changes to GAAP that have been approved as of December 1, 2018) which would require the capitalization of leases characterized as "operating leases" as of December 1, 2018 (it being understood and agreed, for the avoidance of doubt, financial statements delivered pursuant hereto shall be prepared without giving effect to this clause) and (iv) without giving effect to the one-time adjustment to implement Accounting Standards Update 2016-13, Measurement of Credit Losses on Financial Instruments. For purposes of any Collateral located in the Province of Quebec or charged by any deed of hypothec (or any other Loan Document) and for all other purposes pursuant to which the interpretation or construction of a Loan Document may be subject to the laws of the Province of Quebec or a court or tribunal exercising jurisdiction in the Province of Quebec, (i) "personal property" shall be deemed to include "movable property", (ii) "real property" shall be deemed to include "immovable property", (iii) "tangible property" shall be deemed to include "corporeal property", (iv) "intangible property" shall be deemed to include "incorporeal property", (v) "security interest", "mortgage" and "lien" shall be deemed to include a "hypothec," "prior claim" and a "resolutory clause", (vi) all references to filing, registering or recording under the UCC or the Canadian PPSA shall be deemed to include publication under the Civil Code of Quebec, (vii) all references to "perfection" of or "perfected" Liens shall be deemed to include a reference to the "opposability" of such Liens to third parties, (viii) any "right of offset", "right of setoff" or similar expression shall be deemed to include a "right of compensation", (ix) "goods" shall be deemed to include "corporeal movable property" other than chattel paper, documents of title, instruments, money and securities, (x) an "agent" shall be deemed to include a "mandatary", (xi) "construction liens" shall be deemed to include "legal hypothecs", (xii) "joint and several" shall be deemed to include "solidary", (xiii) "gross negligence or willful misconduct" shall be deemed to be "intentional or gross fault", (xiv) "beneficial ownership" shall be deemed to include "ownership on behalf of another as mandatary", (xv) "easement" shall be deemed to include "servitude", (xvi) "priority" shall be deemed to include "prior claim", (xvii) "survey" shall be deemed to include "certificate of location and plan", (xviii) "fee simple title" shall be deemed to include "absolute ownership", and (xix) "foreclosure" shall be deemed to include "the exercise of a hypothecary right".

Section 1.03 Exchange Rates; Currency Equivalent. All references in the Loan Documents to Loans, Letters of Credit, Obligations, Borrowing Base components and other amounts shall be denominated in U.S. Dollars, unless expressly provided otherwise. The Dollar Equivalent of any amounts denominated or reported under a Loan Document in a currency other than U.S. Dollars shall be determined by the Administrative Agent on a daily basis, based on the current Spot Rate. The Lead Borrower shall report value and other Borrowing Base components to the Administrative Agent in the currency invoiced by the Lead Borrower or shown in the Lead Borrower's financial records, and unless expressly provided otherwise, shall deliver financial statements and calculate financial covenants in U.S. Dollars. Notwithstanding anything herein to the contrary, if any Obligation is funded and expressly denominated in a currency other than U.S. Dollars, the Borrowers shall repay such Obligation in such other currency.

Section 1.04 Additional Alternative Currencies.

(a) The Borrowers may from time to time request that Revolving Loans be made and/or Letters of Credit be issued in a currency other than those specifically listed in the definition of "Alternative Currency"; provided that such requested currency is a lawful currency (other than U.S. Dollars) that is

readily available and freely transferable and convertible into U.S. Dollars. In the case of any such request with respect to the making of Revolving Loans, such request shall be subject to the approval of the Administrative Agent and the Revolving Lenders with Commitments in respect of the Facility under which such additional Alternative Currency is being requested; and in the case of any such request with respect to the issuance of Letters of Credit, such request shall be subject to the approval of the Administrative Agent and the applicable Issuing Bank.

(b) Any such request shall be made to the Administrative Agent not later than 11:00 a.m., twenty (20) Business Days prior to the date of the desired Credit Extension (or such other time or date as may be agreed by the Administrative Agent and, in the case of any such request pertaining to Letters of Credit, the applicable Issuing Bank, in its or their sole discretion). In the case of any such request pertaining to Revolving Loans, the Administrative Agent shall promptly notify each applicable Lender thereof; and in the case of any such request pertaining to Letters of Credit, the Administrative Agent shall promptly notify the applicable Issuing Bank thereof. Each applicable Lender (in the case of any such request pertaining to Revolving Loans) or the applicable Issuing Bank (in the case of a request pertaining to Letters of Credit) shall notify the Administrative Agent, not later than 11:00 a.m., ten (10) Business Days after receipt of such request whether it consents, in its sole discretion, to the making of Revolving Loans or the issuance of Letters of Credit, as the case may be, in such requested currency.

(c) Any failure by a Revolving Lender or the applicable Issuing Bank, as the case may be, to respond to such request within the time period specified in the preceding sentence shall be deemed to be a refusal by such Revolving Lender or the applicable Issuing Bank, as the case may be, to permit Revolving Loans to be made or Letters of Credit to be issued in such requested currency. If the Administrative Agent and all the Revolving Lenders with Commitments in respect of the Facility under which such additional Alternative Currency is being requested consent to making Revolving Loans in such requested currency, the Administrative Agent shall so notify such Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Borrowings of Revolving Loans; and if the Administrative Agent and the applicable Issuing Bank consent to the issuance of Letters of Credit in such requested currency, the Administrative Agent shall so notify such Borrower and such currency shall thereupon be deemed for all purposes to be an Alternative Currency hereunder for purposes of any Letter of Credit issuances. If the Administrative Agent shall fail to obtain consent to any request for an additional currency under this Section 1.04, the Administrative Agent shall promptly so notify such Borrower.

Section 1.05 Divisions. For all purposes under the Loan Documents, in connection with any division or plan of division under Delaware law (or any comparable event under a different jurisdiction's laws): (a) if any asset, right, obligation or liability of any Person becomes the asset, right, obligation or liability of a different Person, then it shall be deemed to have been transferred from the original Person to the subsequent Person, and (b) if any new Person comes into existence, such new Person shall be deemed to have been organized on the first date of its existence by the holders of its Equity Interests at such time.

Section 1.06 Effectuation of Transactions. Each of the representations and warranties of the Borrowers contained in this Agreement (and all corresponding definitions) and applicable on the DIP Closing Date and thereafter, are made after giving effect to the Transactions, unless the context otherwise requires.

Section 1.07 Timing of Payment or Performance. Except as otherwise expressly provided herein, when the payment of any obligation or the performance of any covenant, duty or obligation is stated to be due or performance required on a day which is not a Business Day, the date of such payment or performance shall extend to the immediately succeeding Business Day.

Section 1.08 Joint and Several Liability. To the fullest extent permitted by law the liability of each Borrower for the obligations under this Agreement and the other Loan Documents of the other applicable Borrowers with whom it has joint and several liability (as set forth in Section 2.01(b)) shall be absolute, unconditional and irrevocable, without regard to (i) the validity or enforceability of this Agreement or any other Loan Document, any of the obligations hereunder or thereunder or any other collateral security therefor or guarantee or right of offset with respect thereto at any time or from time to time held by any applicable Secured Party, (ii) any defense, set-off or counterclaim (other than a defense of payment or performance hereunder; provided that no Borrower hereby waives any suit for breach of a contractual provision of any of the Loan Documents) which may at any time be available to or be asserted by such other applicable Borrower or any other Person against any Secured Party or (iii) any other circumstance whatsoever (with or without notice to or knowledge of such other applicable Borrower or such Borrower) which constitutes, or might be construed to constitute, an equitable or legal discharge of such other applicable Borrower for the obligations hereunder or under any other Loan Document, or of such Borrower under this Section 1.09, in bankruptcy or in any other instance.

Section 1.09 Exchange Rates; Currency Equivalents; Basket Calculations.

(a) The Administrative Agent does not warrant, nor accept responsibility, nor shall the Administrative Agent have any liability with respect to the administration, submission or any other matter related to the LIBO Rate or with respect to any rate that is an alternative or replacement for or successor to any such rate (including, without limitation, any alternate rate implemented pursuant to Section 3.01(a)) or the effect of any of the foregoing, or of any related changes made to this Agreement pursuant to Section 3.01(a) (other than, for the avoidance of doubt, with respect to its obligation to apply the definition of such rate in accordance with its terms and comply with its express obligations in Article 3 (including Section 3.01)).

(b) Notwithstanding the foregoing, for purposes of determining compliance with any covenant in Article 10 with respect to any amount of cash on deposit, Indebtedness, Investment, Restricted Payment, Lien or Disposition (each, a "Covenant Transaction") in a currency other than U.S. Dollars, no Default or Event of Default shall be deemed to have occurred solely as a result of changes in rates of exchange occurring after the time such Covenant Transaction is incurred or made.

(c) For purposes of determining compliance with any covenant in Article 10, with respect to the amount of any Covenant Transaction in a currency other than U.S. Dollars, such amount (i) if incurred or made in reliance on a fixed Dollar basket, will be converted into U.S. Dollars based on the relevant currency exchange rate in effect on the DIP Closing Date, and (ii) if incurred in reliance on a percentage basket, will be converted into U.S. Dollars based on the relevant currency exchange rate in effect on the date such Covenant Transaction is incurred or made and such percentage basket will be measured at the time such Covenant Transaction is incurred or made.

Section 1.10 Interpretation (Australia) and Banking Code of Practice (Australia).

(a) Without prejudice to the generality of any provision of this Agreement, in this Agreement where it relates to Australian Loan Party, a reference in this Agreement to:

(i) "Account" also includes any "account" as defined in section 10 of the Australian PPSA;

(ii) "Affiliate" has the meaning given to it in section 50AA of the Australian Corporations Act;

(iii) "Controller", "receiver" or "receiver manager" has the meaning given to it in section 9 of the Australian Corporations Act;

(iv) "Account Debtor" also includes any "account debtor" as defined in section 10 of the Australian PPSA;

(v) "Inventory" has the meaning provided in section 10 of the Australian PPSA; and

(vi) "Subsidiary" shall mean a subsidiary within the meaning given in Part 1.2 Division 6 of the Australian Corporations Act.

(b) The parties agree that the Australian Banking Association Banking Code of Practice does not apply to the Loan Documents nor the transactions under them.

ARTICLE 2 AMOUNT AND TERMS OF CREDIT

Section 2.01 The Commitments.

(a) Subject to the terms and conditions and relying upon the representations and warranties herein set forth:

(i) each North American Revolving Lender agrees, severally and not jointly, to make North American Revolving Loans to the U.S. Borrowers in U.S. Dollars or in one or more Alternative Currencies, if any, at any time and from time to time on and after the DIP Closing Date until the earlier of one (1) Business Day prior to the Maturity Date and the termination of the North American Revolving Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in the Availability Conditions not being met;

(ii) each Swiss Revolving Lender agrees, severally and not jointly, to make Swiss Revolving Loans to the Swiss Borrower in U.S. Dollars or in one or more Alternative Currencies, at any time and from time to time on and after the DIP Closing Date until the earlier of one (1) Business Day prior to the Maturity Date and the termination of the Swiss Revolving Commitment of such Lender in accordance with the terms hereof, in an aggregate principal amount at any time outstanding that will not result in the Availability Conditions not being met;

(iii) each DIP Term Lender agrees, severally and not jointly with any other DIP Term Lender, to make an initial advance of the DIP Term Loans to the Lead Borrower in U.S. Dollars in an aggregate principal amount equal to $20,000,000 (the "Interim DIP Term Amount") in one draw on the DIP Closing Date, subject to the satisfaction of the conditions set forth in Section 6.03 (such funding date, the "Interim DIP Term Funding Date"); and

(iv) each DIP Term Lender agrees, severally and not jointly, to make DIP Term Loans to the Lead Borrower in U.S. Dollars in a principal amount equal to $245,000,000 (the "Closing Date DIP Term Amount") on the DIP Term Loan Closing Date.

Within the limits set forth above and subject to the terms, conditions and limitations set forth herein, the Borrowers may borrow, pay or prepay and reborrow Revolving Loans under each applicable Facility (other than the DIP Term Facility). DIP Term Loans that are repaid or prepaid may not be reborrowed.

(b) All U.S. Loan Parties and, subject to the Swiss Guaranty Limitations, all Foreign Loan Parties shall be jointly and severally liable for all Obligations regardless of which Borrower received the proceeds thereof.

(c) Notwithstanding anything to the contrary contained herein or in any other Loan Document, during the Interim Period, the maximum amounts (such amounts the "Interim DIP ABL Amounts") available to be drawn (excluding the deemed issuance of the Existing Letters of Credit but including extensions of credit by the issuance of any other Letter of Credit) by any Borrower under (x) the North American Revolving Facility shall be limited to $137,000,000 and (y) the Swiss Revolving Facility shall be limited to $21,000,000 in the aggregate, in each case, subject to compliance with the terms, conditions and covenants of this Agreement, the other Loan Documents and the DIP Orders. All Loans made available to the Borrowers during the Interim Period will be immediately due and payable and all Revolving Commitments shall be terminated, in each case, on the date that is 40 days after the Petition Date unless the Final Order shall have been entered by the Bankruptcy Court on or before such date. Upon the Bankruptcy Court's entry of the Final Order and satisfaction of any other conditions precedent, the full remaining amount of the Revolving Commitments shall be available to the Debtors in accordance with the terms of this Agreement and the Final Order.

(d) Notwithstanding anything to the contrary contained herein or in any other Loan Document, the DIP Term Loans (other than the Interim DIP Term Amount which shall be funded on the Interim DIP Term Funding Date) shall only be available on the DIP Term Loan Closing Date.

Section 2.02 Loans.

(a) (i) Each North American Revolving Loan shall be made as part of a Borrowing consisting of North American Revolving Loans made by the Revolving Lenders ratably in accordance with their applicable North American Revolving Commitments, (ii) each Swiss Revolving Loan shall be made as part of a Borrowing consisting of Swiss Revolving Loans made by the Revolving Lenders ratably in accordance with their Swiss Revolving Commitments and (iii) each DIP Term Loan shall be made as part of a Borrowing consisting of DIP Term Loans made by the DIP Term Lenders ratably in accordance with their DIP Term Commitments; provided that the failure of any Lender to make any Loan shall not in itself relieve any other Lender of its obligation to lend hereunder (it being understood, however, that no Lender shall be responsible for the failure of any other Lender to make any Loan required to be made by such other Lender). Except for Loans deemed made pursuant to Section 2.02(f), Loans (other than Swingline Loans) comprising any Borrowing shall be in an aggregate principal amount that is (i) in the case of Base Rate Loans, equal to the amount requested by the applicable Borrower and (ii) in the case of LIBO Rate Loans, (A) an integral multiple of the Dollar Equivalent of $250,000 and not less than the Dollar Equivalent of $1,000,000 (or, if such Borrowing is denominated in an Alternative Currency, 1,000,000 units of such Alternative Currency), or (B) equal to the remaining available balance of the Revolving Commitments under the applicable Facility.

(b) Subject to Section 3.01, (i) each Borrowing by a U.S. Borrower shall be comprised entirely of LIBO Rate Loans (or, in the case of Borrowings denominated in U.S. Dollars, Base Rate Loans or LIBO Rate Loans) and (ii) each Borrowing by the Swiss Borrower shall be comprised entirely of LIBO Rate Loans, in each case, as the applicable Borrower may request pursuant to Section 2.03. Each North American Swingline Loan made to the U.S. Borrower shall be in U.S. Dollars and shall be a Base Rate Loan unless otherwise agreed by the applicable Borrower and the Swingline Lender in its sole discretion. Each Swiss Swingline Loan made to the Swiss Borrower shall be in Swiss Francs and shall be Overnight LIBO Loans unless otherwise agreed by the applicable Borrower and the Swingline Lender in its sole discretion. Each Lender may at its option make any Loan by causing any domestic or foreign branch or Affiliate of such Lender to make such Loan; provided that any exercise of such option shall not affect the

obligation of the Borrowers to repay such Loan in accordance with the terms of this Agreement or cause the Borrowers to pay additional amounts pursuant to Section 3.01. Borrowings of more than one Type may be outstanding at the same time; provided further that the Borrowers shall not be entitled to request any Borrowing that, if made, would result in (x) the Lead Borrower having more than ten (10) LIBO Rate Loans outstanding hereunder at any one time, (y) Briggs & Stratton AG, a Swiss corporation, as the Swiss Borrower, having more than ten (10) LIBO Rate Loans outstanding hereunder at any one time and (z) for any other Person that becomes a Borrower pursuant to the terms hereof after the DIP Closing Date, an amount of LIBO Rate Loans outstanding hereunder at any one time to be mutually agreed by the Lead Borrower and the Administrative Agent. For purposes of the foregoing, Borrowings having different Interest Periods, regardless of whether they commence on the same date, shall be considered separate Borrowings.

(c) Except with respect to Loans made pursuant to Section 2.02(f), each Lender shall make each Loan (other than Swingline Loans) to be made by it hereunder on the proposed date thereof by wire transfer of immediately available funds to such account as the Administrative Agent may designate (i) in New York City, in the case of Loans to a U.S. Borrower not later than 3:00 p.m. New York time and (ii) in London not later than the Applicable Time specified by the Administrative Agent in the case of any Loans to the Swiss Borrower, and the Administrative Agent shall promptly credit the amounts so received to an account as directed by the Lead Borrower in the applicable Notice of Borrowing maintained with the Administrative Agent or, if a Borrowing shall not occur on such date because any condition precedent herein specified shall not have been met or waived, return the amounts so received to the respective Lenders.

(d) Unless the Administrative Agent shall have received notice from a Lender prior to the time of any Borrowing that such Lender will not make available to the Administrative Agent such Lender's portion of such Borrowing, the Administrative Agent may assume that such Lender has made such portion available to the Administrative Agent on the date of such Borrowing in accordance with paragraph (c) above, and the Administrative Agent may, in reliance upon such assumption, make available to the applicable Borrower on such date a corresponding amount. If the Administrative Agent shall have so made funds available then, to the extent that such Lender shall not have made such portion available to the Administrative Agent, such Lender and the Lead Borrower severally agree to repay to the Administrative Agent forthwith on demand such corresponding amount together with interest thereon, for each day from the date such amount is made available to such Borrower until the date such amount is repaid to the Administrative Agent at (i) in the case of the applicable Borrowers, the interest rate applicable at the time to the Loans comprising such Borrowing and (ii) in the case of such Lender, a rate reasonably determined by the Administrative Agent to represent its cost of overnight or short-term funds (which determination shall be conclusive absent demonstrable error). If such Lender shall repay to the Administrative Agent such corresponding amount, such amount shall constitute such Lender's Loan as part of such Borrowing for purposes of this Agreement.

(e) Notwithstanding any other provision of this Agreement, no Borrower shall be entitled to request, or to elect to convert or continue, any Borrowing if the Interest Period requested with respect thereto would end after the Maturity Date.

(f) If an Issuing Bank shall not have received from the applicable Borrowers the payment required to be made by Section 2.13(e) within the time specified in such Section, such Issuing Bank will promptly notify the Administrative Agent of the LC Disbursement and the Administrative Agent will promptly notify each applicable Revolving Lender of such LC Disbursement and its Pro Rata Percentage thereof. Each such Revolving Lender shall pay by wire transfer of immediately available funds to the Administrative Agent on such date (or, if such Revolving Lender shall have received such notice later than 12:00 (noon), New York City time, on any day, not later than 11:00 a.m., New York City time on the immediately following Business Day), an amount equal to such Revolving Lender's Pro Rata Percentage

of such LC Disbursement (it being understood that such amount shall be deemed to constitute a Base Rate Loan (for LC Disbursements denominated in U.S. Dollars), or a LIBO Rate Loan with an Interest Period of one month (for LC Disbursements denominated in an Alternative Currency) of such Revolving Lender, and such payment shall be deemed to have reduced the applicable LC Exposure), and the Administrative Agent will promptly pay to such Issuing Bank amounts so received by it from the applicable Revolving Lenders. The Administrative Agent will promptly pay to the applicable Issuing Bank any amounts received by it from the applicable Borrower pursuant to Section 2.13(e) prior to the time that any Revolving Lender makes any payment pursuant to this paragraph (f); any such amounts received by the Administrative Agent thereafter will be promptly remitted by the Administrative Agent to the Revolving Lenders that shall have made such payments and to the applicable Issuing Bank, as their interests may appear. If any Revolving Lender under the applicable Facility shall not have made its Pro Rata Percentage of such LC Disbursement available to the Administrative Agent as provided above, such Revolving Lender and the applicable Borrowers severally agree to pay interest on such amount, for each day from and including the date such amount is required to be paid in accordance with this paragraph (f) to but excluding the date such amount is paid, to the Administrative Agent for the account of the applicable Issuing Bank at (i) in the case of the Lead Borrower, a rate per annum equal to the interest rate applicable to Revolving Loans pursuant to Section 2.06, and (ii) in the case of such Revolving Lender, at the Base Rate (for U.S. Dollars) or the LIBO Rate with an Interest Period of one month for all Alternative Currencies.

Section 2.03 Borrowing Procedure. To request a Borrowing, the Lead Borrower shall notify the Administrative Agent of such request by telecopy or electronic transmission (if arrangements for doing so have been approved by the Administrative Agent, which approval shall not be unreasonably withheld, conditioned or delayed) or (other than in the case of requests for LIBO Rate Loans) telephone (promptly confirmed by telecopy or electronic transmission) (i) in the case of a Borrowing by any U.S. Borrower of LIBO Rate Loans under the North American Revolving Facility, not later than 1:00 p.m., New York City time, three (3) Business Days before the date of the proposed Borrowing to the Administrative Agent's New York office, (ii) in the case of a Borrowing of LIBO Rate Loans under the Swiss Revolving Facility, not later than 11:00 a.m., London time, four (4) Business Days before the date of the proposed Borrowing to the Administrative Agent's New York office, (iii) in the case of a Borrowing by the Lead Borrower of LIBO Rate Loans under the DIP Term Facility, not later than three (3) Business Days (or such shorter period as is approved by the Required DIP Term Lenders) before the date of the proposed Borrowing to the Administrative Agent's New York office and (iv) in the case of a Borrowing of Base Rate Loans, not later than 1:00 p.m., New York City time, on the Business Day of the proposed Borrowing to the Administrative Agent's New York office. Each such telephonic Notice of Borrowing shall be irrevocable, subject to Sections 2.09 and 3.01, and shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Notice of Borrowing in a form approved by the Administrative Agent and signed by the Lead Borrower. Each such telephonic and written Notice of Borrowing shall specify the following information in compliance with Section 2.02:

(a) the name of the Borrower (which, in the case of a Borrowing of DIP Term Loans, shall be the Lead Borrower);

(b) the aggregate amount of such Borrowing;

(c) the date of such Borrowing, which shall be a Business Day;

(d) whether such Borrowing is to be a Borrowing of Base Rate Loans or a Borrowing of LIBO Rate Loans;

(e) in the case of a Borrowing of LIBO Rate Loans, the initial Interest Period to be applicable thereto, which shall be a period contemplated by the definition of the term "Interest Period";

(f) the location and number of the account to which funds are to be disbursed, which shall comply with the requirements of Section 2.02;

(g) the Facility under which the Loans are to be borrowed;

(h) the currency of the Borrowing; and

(i) that the applicable conditions set forth in Article 6 are satisfied or waived as of the date of the notice.

If no election as to the Type of Borrowing is specified, then the requested Borrowing shall be (x) in the case of a Borrowing in U.S. Dollars by a U.S. Borrower, a Borrowing of Base Rate Loans and (y) in the case of any other Borrowing, a Borrowing of LIBO Rate Loans with an Interest Period of one month. If no Interest Period is specified with respect to any requested Borrowing of LIBO Rate Loans, then the Lead Borrower shall be deemed to have selected an Interest Period of one month's duration. If no currency is specified, then the requested Borrowing shall be made in U.S. Dollars. Promptly following receipt of a Notice of Borrowing in accordance with this Section 2.03, the Administrative Agent shall advise each applicable Lender of the details thereof and of the amount of such Lender's Loan to be made as part of the requested Borrowing.

This Section 2.03 shall not apply to Swingline Loans, the borrowing of which shall be in accordance with Section 2.12.

Section 2.04 Evidence of Debt; Repayment of Loans.

(a) Each U.S. Borrower, jointly and severally, hereby unconditionally promises to pay to the Administrative Agent the then unpaid principal amount of each Revolving Loan made to any Borrower on the Maturity Date. Subject to the Swiss Guaranty Limitations, the Swiss Borrower hereby unconditionally promises to pay to the Administrative Agent the then unpaid principal amount of each Loan made to the Swiss Borrower on the Maturity Date. Each U.S. Borrower, jointly and severally, hereby unconditionally promises to pay to the Administrative Agent the then unpaid principal amount of each DIP Term Loan made to the Lead Borrower on the Maturity Date; provided that no payment shall be made in respect of the DIP Term Loans until the Full Senior Obligation Repayment has occurred.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender resulting from each Loan made by such Lender from time to time, including the amounts of principal and interest payable and paid to such Lender from time to time under this Agreement. The Lead Borrower shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(c) The Administrative Agent shall maintain accounts in which it will record (i) the amount of each Loan made hereunder, the Class and Type thereof, the currency thereof and the Interest Period applicable thereto; (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrowers to each Lender hereunder; and (iii) the amount of any sum received by the Administrative Agent hereunder for the account of the Lenders and each Lender's share thereof. Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing the indebtedness of the Borrowers to such Lender. The Lead Borrower shall be entitled to review records of such accounts with prior reasonable notice during normal business hours.

(d) The entries made in the accounts maintained pursuant to paragraphs (b) and (c) above shall be *prima facie* evidence of the existence and amounts of the obligations therein recorded absent

demonstrable error; provided that the failure of any Lender or the Administrative Agent to maintain such accounts or any error therein shall not in any manner affect the obligations of the Borrowers to repay the Loans in accordance with their terms.

(e) Any Lender may request that Loans made by it thereunder be evidenced by a promissory note. In such event, the applicable Borrower shall promptly prepare, execute and deliver to such Lender a promissory note payable to such Lender (or, if requested by such Lender, to such Lender and its registered assigns) substantially in the form of Exhibit B.

Section 2.05 Fees.

(a) Unused Line Fee. With respect to each Facility (other than the DIP Term Facility), the U.S. Borrowers or the Swiss Borrower, as applicable, shall pay to the Administrative Agent, for the *pro rata* benefit of the Revolving Lenders (other than any Defaulting Lender) under such Facility, a fee in U.S. Dollars equal to the Unused Line Fee Rate multiplied by the amount by which the Revolving Commitments (other than Revolving Commitments of a Defaulting Lender) under such Facility exceed the average daily balance of outstanding Revolving Loans under such Facility and stated amount of outstanding Letters of Credit under such Facility during any calendar month (such fee, the "Unused Line Fee") provided that, during the Interim Period, the Unused Line Fee shall only be earned on the portion of the undrawn Interim DIP ABL Amount. Such fee shall accrue commencing on the DIP Closing Date, and will be payable in arrears, on the first Business Day of each calendar month, commencing on August 1, 2020.

(b) Administrative Agent Fees. The Lead Borrower agrees to pay to the Administrative Agent, for its own account, the fees set forth in the Fee Letter or such other fees payable in the amounts and at the times separately agreed upon between the Lead Borrower and the Administrative Agent (the "Administrative Agent Fees").

(c) LC and Fronting Fees. With respect to the North American Revolving Facility, the U.S. Borrowers, jointly and severally, agree to pay (i) to the Administrative Agent for the account of each North American Revolving Lender a participation fee ("North American LC Participation Fee") in U.S. Dollars with respect to its participations in North American Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on LIBO Rate Loans pursuant to Section 2.06, on the average daily amount of such North American Revolving Lender's North American LC Exposure (excluding any portion thereof attributable to unreimbursed North American LC Disbursements) during the period from and including the DIP Closing Date to but excluding the later of the date on which such North American Revolving Lender's North American Revolving Commitment terminates and the date on which such North American Revolving Lender ceases to have any North American LC Exposure and (ii) to each North American Issuing Bank a fronting fee ("North American Fronting Fee") in U.S. Dollars, which shall accrue at the rate of 0.125% per annum on the average daily amount of the North American LC Exposure (excluding any portion thereof attributable to unreimbursed North American LC Disbursements) during the period from and including the DIP Closing Date to but excluding the later of the date of termination of the North American Revolving Commitments and the date on which there ceases to be any North American LC Exposure, as well as each North American Issuing Bank's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any North American Letter of Credit or processing of drawings thereunder as agreed among the Lead Borrower and such North American Issuing Bank from time to time. With respect to the Swiss Revolving Facility, the Swiss Borrower agrees to pay (i) to the Administrative Agent for the account of each Swiss Revolving Lender a participation fee (together with the North American LC Participation Fee, the "LC Participation Fees") in the same currency of the denomination of the Swiss Letters of Credit issued with respect to its participations in Swiss Letters of Credit, which shall accrue at a rate equal to the Applicable Margin from time to time used to determine the interest rate on LIBO Rate Loans pursuant to Section 2.06, on the average

daily amount of such Swiss Revolving Lender's Swiss LC Exposure (excluding any portion thereof attributable to unreimbursed Swiss LC Disbursements) during the period from and including the DIP Closing Date to but excluding the later of the date on which such Swiss Revolving Lender's Swiss Revolving Commitment terminates and the date on which such Swiss Revolving Lender ceases to have any Swiss LC Exposure, and (ii) to each Swiss Issuing Bank a fronting fee (together with the North American Fronting Fee, the "Fronting Fees") in Pound Sterling, Euros, Australian Dollars or Swiss Francs, which shall accrue at the rate of 0.125% per annum on the average daily amount of the Swiss LC Exposure (excluding any portion thereof attributable to unreimbursed Swiss LC Disbursements) during the period from and including the DIP Closing Date to but excluding the later of the date of termination of the Swiss Revolving Commitments and the date on which there ceases to be any Swiss LC Exposure, as well as each Swiss Issuing Bank's standard and reasonable fees with respect to the issuance, amendment, renewal or extension of any Swiss Letter of Credit or processing of drawings thereunder as agreed among the Lead Borrower and such Swiss Issuing Bank from time to time. LC Participation Fees and Fronting Fees accrued to but excluding the last day of each calendar month of each year shall be payable on the first Business Day following such last day, commencing on the first such date to occur after the DIP Closing Date; provided that all such fees shall be payable on the date on which the Revolving Commitments terminate and any such fees accruing after the date on which the Revolving Commitments terminate shall be payable on demand (including documentation reasonably supporting such request). Any other fees payable to the Issuing Banks pursuant to this paragraph shall be payable within ten (10) days after written demand (together with backup documentation supporting such reimbursement request). All LC Participation Fees and Fronting Fees shall be computed on the basis of a year of 360 days and shall be payable for the actual number of days elapsed (including the first day but excluding the last day).

(d) On the DIP Term Loan Closing Date, the Lead Borrower agrees to pay to the Administrative Agent for the account of each DIP Term Lender, a closing fee in an amount equal to 2.00% of the aggregate principal amount of the DIP Term Loans funded by such DIP Term Lender (including the Interim DIP Term Loans previously funded by such DIP Term Lender), which amount may be treated as either upfront fee or OID by such DIP Term Lender in its discretion and shall be deducted from the proceeds of the DIP Term Loans funded on the DIP Term Loan Closing Date. If the DIP Term Loan Closing Date fails to occur on or prior to the DIP Term Commitment Termination Date, the Lead Borrower agrees to pay to the Administrative Agent for the account of each DIP Term Lender, a closing fee in an amount equal to 2.00% of the aggregate principal amount of the Interim DIP Term Loans funded by such DIP Term Lender.

(e) The Lead Borrower agrees to pay to the Administrative Agent for the ratable account of each Revolving Lender, an upfront fee in an amount equal to 0.75% of its Revolving Commitment under the DIP ABL Facilities, which fee will be due and payable on the DIP Closing Date.

(f) All fees shall be paid on the dates due, in immediately available funds, to the Administrative Agent for distribution, if and as appropriate, among the applicable Lenders (other than Defaulting Lenders), except that the Fronting Fees shall be paid directly to each Issuing Bank. Once paid, none of the fees shall be refundable under any circumstances.

Section 2.06 Interest on Loans.

(a) (i) Subject to the provisions of Section 2.06(b), the Loans comprising each Borrowing of Base Rate Loans shall bear interest at a rate per annum equal to the Base Rate *plus* the Applicable Margin in effect from time to time.

(ii) Subject to the provisions of Section 2.06(b), the Loans comprising each Borrowing of LIBO Rate Loans shall bear interest at a rate per annum equal to the LIBO Rate for the Interest Period in effect for such Borrowing *plus* the Applicable Margin in effect from time to time.

(iii) Subject to the provisions of Section 2.06(b), (A) the Loans comprising each Borrowing of North American Swingline Loans in U.S. Dollars shall bear interest at a rate per annum equal to the Base Rate *plus* the Applicable Margin in effect from time to time (or such other rate as may be agreed upon by the applicable Borrower and the Swingline Lender in its sole discretion) and (B) the Loans comprising each Borrowing of Swiss Swingline Loans shall bear interest at a rate per annum equal to, in the case of any other Swiss Swingline Loans, the Overnight LIBO Rate, *plus* the Applicable Margin in effect from time to time (or such other rate as may be agreed upon by the applicable Borrower and the Swingline Lender in its sole discretion).

(b) Notwithstanding the foregoing, if any principal of or interest on any Loan or any fee payable by any Borrower hereunder is not paid when due, whether at stated maturity, upon acceleration or otherwise, such overdue amount shall bear interest, after as well as before judgment, at a rate per annum equal to (i) in the case of overdue principal of any Loan, 2% *plus* the rate otherwise applicable to such Loan or (ii) in the case of any interest or fee, 2% *plus* the rate applicable to Base Rate Loans.

(c) Accrued interest on each Loan shall be payable (i) in the case of Base Rate Loans, on each Adjustment Date, commencing with August 1, 2020, in arrears for such Base Rate Loans, (ii) in the case of Overnight LIBO Rate Loans, on the first Business Day of each month, in arrears for such Overnight LIBO Rate Loans, (iii) in the case of LIBO Rate Loans, at the end of the current Interest Period therefor and, in the case of an Interest Period in excess of three months, on each date occurring at three-month intervals after the first day of such Interest Period, (iv) in the case of all Revolving Loans, upon termination of the Revolving Commitments and (v) in the case of DIP Term Loans, on the Maturity Date; provided that (x) interest accrued pursuant to paragraph (b) of this Section 2.06 shall be payable on demand and, absent demand, on each Adjustment Date, at the end of the current Interest Period, upon termination of the Revolving Commitments and on the Maturity Date, as applicable, (y) in the event of any repayment or prepayment of any Loan (other than a prepayment of a Base Rate Loan prior to the end of the Revolving Availability Period), accrued interest on the principal amount repaid or prepaid shall be payable on the date of such repayment or prepayment and (z) in the event of any conversion of any LIBO Rate Loan prior to the end of the current Interest Period therefor, accrued interest on such Loan shall be payable on the effective date of such conversion.

(d) All interest hereunder shall be computed on the basis of a year of 360 days, except that interest (i) computed by reference to the Base Rate at times when the Base Rate is based on the Prime Rate and (ii) for Borrowings denominated in Australian Dollars or Pound Sterling shall be computed on the basis of a year of 365 days, and in each case shall be payable for the actual number of days elapsed (including the first day but excluding the last day). The applicable Base Rate or LIBO Rate shall be determined by the Administrative Agent in accordance with the provisions of this Agreement, and such determination shall be conclusive absent demonstrable error.

(e) Interest Act (Canada). For purposes of disclosure pursuant to the *Interest Act* (Canada), the annual rates of interest or fees to which the rates of interest or fees provided in this Agreement and the other Loan Documents (and stated herein or therein, as applicable, to be computed on the basis of 360 days or any other period of time less than a calendar year) are equivalent are the rates so determined multiplied by the actual number of days in the applicable calendar year and divided by 360 or such other period of time, respectively.

(f) Limitation on Interest. If any provision of this Agreement or of any of the other Loan Documents would obligate any Loan Party to make any payment of interest or other amount payable to the Lenders in an amount or calculated at a rate which would be prohibited by law or would result in a receipt by the Lenders of interest at a criminal rate (as such terms are construed under the *Criminal Code* (Canada)) then, notwithstanding such provisions, such amount or rate shall be deemed to have been adjusted with

retroactive effect to the maximum amount or rate of interest, as the case may be, as would not be so prohibited by law or so result in a receipt by the Lenders of interest at a criminal rate, such adjustment to be effected, to the extent necessary, as follows: (1) first, by reducing the amount or rate of interest required to be paid to the Lenders under this Section 2.06, and (2) second, by reducing any fees, commissions, premiums and other amounts required to be paid to the Lenders which would constitute "interest" for purposes of Section 347 of the *Criminal Code* (Canada). Notwithstanding the foregoing, and after giving effect to all adjustments contemplated thereby, if the Lenders shall have received an amount in excess of the maximum permitted by that section of the *Criminal Code* (Canada), the Loan Parties shall be entitled, by notice in writing to the Administrative Agent, to obtain reimbursement from the Lenders in an amount equal to such excess and, pending such reimbursement, such amount shall be deemed to be an amount payable by the Lenders to the Borrowers. Any amount or rate of interest referred to in this Section 2.06 shall be determined in accordance with generally accepted actuarial practices and principles as an effective annual rate of interest over the term that the applicable Loan remains outstanding on the assumption that any charges, fees or expenses that fall within the meaning of "interest" (as defined in the *Criminal Code* (Canada)) shall, if they relate to a specific period of time, be pro-rated over that period of time and otherwise be pro-rated over the period from the DIP Closing Date to the Maturity Date and, in the event of a dispute, a certificate of a Fellow of the Canadian Institute of Actuaries appointed by the Administrative Agent shall be conclusive for the purposes of such determination.

(g) Swiss Minimum Interest. By entering into this Agreement, the parties to this Agreement have assumed in bona fide that the interest payable hereunder is not and will not become subject to any tax deduction on account of Swiss Withholding Tax. Nevertheless, if a tax deduction is required by Swiss law to be made by a Loan Party in respect of any interest payable under a Loan Document and should it be unlawful for the relevant Loan Party to comply with Section 5.01 (Net Payments) for any reason (where this would otherwise be required by the terms of Section 5.01 (Net Payments)) then:

(i) the applicable interest rate in relation to that interest payment shall be:

(1) the interest rate which would have applied to that interest payment (as provided for in this Section 2.06 (Interest on Loans) or otherwise in this Agreement in the absence of this Section 2.06(g) (Swiss Minimum interest)); divided by:

(2) one minus the rate at which the relevant tax deduction for Swiss Withholding Tax is required to be made (where the rate at which such tax deduction is required to be made is for this purpose expressed as a fraction of one rather than as a percentage); and

(ii) the relevant Loan Party shall be obliged:

(1) to pay the relevant interest at the adjusted rate in accordance with paragraph (i) above; and

(2) to make the tax deduction for Swiss Withholding Tax on the interest so recalculated; and

all references to a rate of interest in Section 2.06 (Interest on Loans) or otherwise in this Agreement shall be construed accordingly.

(iii) To the extent that any interest payable by a Loan Party under this Agreement becomes subject to Swiss Withholding Tax, each relevant party to this Agreement and the relevant Loan Party shall promptly co-operate in completing any procedural formalities (including

submitting forms and documents required by the appropriate Tax authority) to allow the parties under this Agreement to prepare claims for the refund of any Swiss Withholding Tax so deducted.

(iv) If a party to this Agreement receives a refund in respect of Swiss Withholding Tax, that party shall pay an amount to the Loan Party in respect of which the Swiss Withholding Tax relates, which that party determines will leave it, after that payment, in the same after-Tax position as it would have been in had that Swiss Withholding Tax not been required to be paid.

(v) A Loan Party is not required to make an increased payment to a particular Lender (but, for the avoidance of doubt, shall remain required to make an increased payment to all other Lenders) under paragraph (g) above by reason of a tax deduction arising as a result of that Lender (i) making an incorrect declaration of its status as to whether or not it is a Swiss Qualifying Lender or a single Swiss Non-Qualifying Lender, (ii) breaching the restrictions regarding transfers, assignments, participations, sub-participation and exposure transfers set forth in Section 13.04 or (iii) ceasing to be a Swiss Qualifying Lender other than as a result of any change after the date it became a Lender or Participant under this Agreement in (or in the interpretation, administration or application of) any law or double taxation treaty, or any published practice or published concession of any relevant taxing authority.

Section 2.07 Termination and Reduction of Commitments.

(a) The Revolving Commitments, the Swingline Commitment, the North American LC Commitment and the Swiss LC Commitment shall automatically terminate on the Maturity Date. The DIP Term Commitments shall permanently terminate immediately upon funding in full of the Interim DIP Term Loans on the Interim DIP Term Funding Date, in an amount equal to the Interim DIP Term Amount. The remaining DIP Term Commitments shall permanently terminate on the earlier of (x) immediately upon funding in full of the DIP Term Loans (other than the Interim DIP Term Loans) on the DIP Term Loan Closing Date, in an amount equal to the Closing Date DIP Term Amount and (y) the DIP Term Commitment Termination Date.

(b) The Lead Borrower may at any time terminate, or from time to time reduce, the Revolving Commitments of any Class; provided that (i) any such reduction shall be in an amount that is (x) an integral multiple of $1,000,000 or (y) the entire remaining Revolving Commitments of such Class and (ii) the Revolving Commitments under any Facility shall not be terminated or reduced if, after giving effect to any concurrent prepayment of the Revolving Loans under such Facility in accordance with Section 2.09, the Revolving Exposures under such Facility would exceed the Commitments under such Facility.

(c) The Lead Borrower shall notify the Administrative Agent of any election to terminate or reduce the Revolving Commitments of any Facility under paragraph (b) of this Section 2.07 at least three (3) Business Days prior to the effective date of such termination or reduction, specifying such election and the effective date thereof. Promptly following receipt of any notice, the Administrative Agent shall advise the relevant Revolving Lenders of the contents thereof. Each notice delivered by the Lead Borrower pursuant to this Section 2.07 shall be irrevocable except that, to the extent delivered in connection with a refinancing of the applicable Obligations or other transaction, such notice shall not be irrevocable until such refinancing is closed and funded or other transaction is closed. Any effectuated termination or reduction of the Revolving Commitments of any Facility shall be permanent. Each reduction of the Revolving Commitments of any Facility shall be made ratably among the relevant Revolving Lenders in accordance with their respective Revolving Commitments.

(d) Concurrently with the prepayment of the Obligations pursuant to Section 2.09(b)(v) below, the Revolving Commitments shall automatically terminate on a dollar for dollar basis in an amount equal to equal to 100% of the Net Proceeds received from the applicable DIP Prepayment Event.

Section 2.08 Interest Elections.

(a) Each Borrowing initially shall be of the Type specified in the applicable Notice of Borrowing and, in the case of a Borrowing of LIBO Rate Loans, shall have an initial Interest Period as specified in such Notice of Borrowing. Thereafter, the Lead Borrower may elect to convert such Borrowing to a different Type or to continue such Borrowing and, in the case of a Borrowing of LIBO Rate Loans, may elect Interest Periods therefor, all as provided in this Section 2.08. The Lead Borrower may elect different options with respect to different portions of the affected Borrowing, in which case each such portion shall be allocated ratably among the Lenders holding the Loans comprising such Borrowing, and the Loans comprising each such portion shall be considered a separate Borrowing.

(b) To make an election pursuant to this Section 2.08, the Lead Borrower shall notify the Administrative Agent of such election by telephone (other than in relation to a Swiss Revolving Loan) or electronic transmission (if arrangements for doing so have been approved by the Administrative Agent, which approval shall not be unreasonably withheld, delayed or conditioned) by the time that a Notice of Borrowing would be required under Section 2.03 if the Lead Borrower was requesting a Borrowing of the Type resulting from such election to be made on the effective date of such election. Each such telephonic Notice of Conversion/Continuation shall be confirmed promptly by hand delivery or telecopy to the Administrative Agent of a written Notice of Conversion/Continuation substantially in the form of Exhibit A-3, unless otherwise agreed to by the Administrative Agent and the Lead Borrower.

(c) Each telephonic and written Notice of Conversion/Continuation shall specify the following information in compliance with Section 2.02:

(i) the Borrowing to which such Notice of Conversion/Continuation applies and, if different options are being elected with respect to different portions thereof, the portions thereof to be allocated to each resulting Borrowing (in which case the information to be specified pursuant to clauses (iii) and (iv) below shall be specified for each resulting Borrowing);

(ii) the effective date of the election made pursuant to such Notice of Conversion/Continuation, which shall be a Business Day;

(iii) in respect of any Revolving Borrowings, whether the resulting Borrowing is to be a Borrowing of Base Rate Loans or LIBO Rate Loans;

(iv) in respect of any Borrowing of DIP Term Loans, whether the resulting Borrowing is to be a Borrowing of Base Rate Loan or LIBO Rate Loan;

(v) the currency of the resulting Borrowing which, in respect of a Borrowing of DIP Term Loans, shall be U.S. Dollars; and

(vi) if the resulting Borrowing is a Borrowing of LIBO Rate Loans, the Interest Period to be applicable thereto after giving effect to such election, which shall be a period contemplated by the definition of the term "Interest Period."

If any such Notice of Conversion/Continuation requests a Borrowing of LIBO Rate Loans but does not specify an Interest Period, then the Lead Borrower shall be deemed to have selected an Interest Period

of one month's duration. No Borrowing may be converted into or continued as a Borrowing denominated in a different currency, but instead must be prepaid in the original currency of such Borrowing and reborrowed in the other currency.

(d) Promptly following receipt of a Notice of Conversion/Continuation, the Administrative Agent shall advise each applicable Lender of the details thereof and of such Lender's portion of each resulting Borrowing.

(e) If a Notice of Conversion/Continuation with respect to a Borrowing of LIBO Rate Loans denominated in U.S. Dollars under the North American Revolving Facility is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a Borrowing of Base Rate Loans; provided, however, that, if (i) approved by the Administrative Agent (such approval not to be unreasonably withheld, conditioned or delayed) and (ii) the applicable Borrower shall have delivered to the Administrative Agent its customary standard (if applicable) documentation pre-authorizing automatic continuations, such Borrowing shall automatically continue with an Interest Period of one month. If a Notice of Conversion/Continuation with respect to a Borrowing under the Swiss Revolving Facility is not timely delivered prior to the end of the Interest Period applicable thereto, then, unless such Borrowing is repaid as provided herein, at the end of such Interest Period such Borrowing shall be converted to a LIBO Rate Borrowing with an Interest Period of one month. Notwithstanding any contrary provision hereof, if an Event of Default has occurred and is continuing, then, after the occurrence and during the continuance of such Event of Default (i) no outstanding Borrowing in U.S. Dollars may be converted to or continued as a Borrowing of LIBO Rate Loans and (ii) unless repaid, each Borrowing of LIBO Rate Loans in any Alternative Currency shall be converted to or continued as a Borrowing of LIBO Rate Loans in such Alternative Currency with an Interest Period of one month at the end of the Interest Period applicable thereto.

Section 2.09 Optional and Mandatory Prepayments of Loans.

(a) Optional Prepayments. Subject to the last sentence of this Section 2.09(a), the Borrowers shall have the right at any time and from time to time to prepay, without premium or penalty (except as provided in Section 2.09(e) with respect to the DIP Term Loans), any Borrowing, in whole or in part, subject to the requirements of this Section 2.09; provided that each partial prepayment shall be in an amount that is an integral multiple of $100,000. Notwithstanding anything in this Agreement to the contrary, in no event shall any Loan Party repay or prepay the DIP Term Loans until the Full Senior Obligation Repayment.

(b) Mandatory Prepayments.

(i) In the event of the termination of all the Revolving Commitments of any Facility in accordance with the terms of this Agreement, the applicable Borrowers shall, on the date of such termination, (x) repay or prepay all the outstanding Revolving Borrowings and all outstanding Swingline Loans under such Facility and (y) Cash Collateralize the LC Exposure in respect of such Facility in accordance with Section 2.13(j).

(ii) In the event of any partial reduction of the Revolving Commitments under any Facility in accordance with the terms of this Agreement, then (A) at or prior to the effective date of such reduction, the Administrative Agent shall notify the Lead Borrower and the Lenders of the Aggregate Exposures after giving effect thereto and (B) if the Availability Conditions would not be satisfied upon giving effect to such reduction, then the Borrowers shall, on the date of such reduction (or, if such failure to satisfy the Availability Conditions is due to the imposition of new Reserves, a change in the methodology of calculating existing Reserves, a change in eligibility

standards or the occurrence of a Revaluation Date, in each case in accordance with the terms of this Agreement, within (5) five Business Days following receipt of written notice that complies with the terms of this Agreement), *first*, repay or prepay all Swingline Loans, *second*, repay or prepay Revolving Borrowings and *third*, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to comply with the Availability Conditions.

(iii) In the event that the Availability Conditions are not satisfied at any time, the Borrowers shall, immediately after demand (or, if such failure to satisfy the Availability Conditions is due to the imposition of new Reserves, a change in the methodology of calculating existing Reserves, a change in eligibility standards or the occurrence of a Revaluation Date, in each case in accordance with the terms of this Agreement, within five (5) Business Days following receipt of written notice that complies with the terms of this Agreement), *first*, repay or prepay all Swingline Loans, *second*, repay or prepay Revolving Borrowings, and *third*, replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to comply with the Availability Conditions. Notwithstanding the foregoing, if the Availability Conditions are not satisfied solely as a result of the fluctuation of currency exchange rates, then the foregoing requirements shall only apply if the Aggregate Exposures exceed 103% of the amount that would comply with the Availability Conditions.

(iv) In the event that (1) the aggregate LC Exposure exceeds the LC Sublimit then in effect, the Lead Borrower shall, without notice or demand, immediately replace or Cash Collateralize outstanding Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess, (2) the aggregate North American LC Exposure exceeds the North American LC Sublimit then in effect, the Lead Borrower shall, without notice or demand, immediately replace or Cash Collateralize outstanding North American Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess or (3) the aggregate Swiss LC Exposure exceeds the Swiss LC Sublimit then in effect, the Swiss Borrower shall, without notice or demand, immediately replace or Cash Collateralize outstanding Swiss Letters of Credit in accordance with the procedures set forth in Section 2.13(j), in an amount sufficient to eliminate such excess.

(v) In the event and on each occasion that, at any time on or after the DIP Closing Date, any Net Proceeds are received by or on behalf of any Loan Party or any Subsidiary in respect of any DIP Prepayment Event, the Borrowers shall, immediately after such Net Proceeds are received by any Loan Party or any Subsidiary, prepay the Obligations in an aggregate amount equal to 100% of such Net Proceeds subject to Section 2.09(e).

(vi) If, as of any Business Day, (A) Loans are outstanding and (B) the Consolidated Cash Balance exceeds $7,500,000 as of the end of such applicable Business Day, then the Borrowers shall, on the next Business Day thereafter, prepay the Revolving Loans in an aggregate principal amount equal to such excess.

Notwithstanding the foregoing, if any of the foregoing conditions described in subclauses (ii), (iii) or (iv) of this Section 2.09(b) arises solely as a result of the fluctuation of currency exchange rates, then the foregoing requirements set forth in subclauses (ii), (iii) or (iv) of this Section 2.09(b) shall only apply if the LC Exposure, North American LC Exposure or Swiss LC Exposure, as the case may be, exceeds 105% of the maximum amount that would not give rise to any of the foregoing conditions.

(c) Application of Prepayments.

(i) Prior to any optional or mandatory prepayment of Borrowings hereunder, the Lead Borrower shall select the Borrowing or Borrowings to be prepaid and shall specify such selection in the notice of such prepayment pursuant to this paragraph (i) of Section 2.09(c); provided that, no optional and mandatory prepayments of Borrowings hereunder may be applied to DIP Term Obligations until such time as the Full Senior Obligation Repayment has occurred. With respect to mandatory prepayments of Loans, unless during a Liquidity Period (other than an Interim Period), except as provided in Section 2.09(b)(iii) hereof with respect to mandatory prepayments of Revolving Loans, all such mandatory prepayments shall be applied as follows: *first*, to fees and reimbursable expenses of the Administrative Agent then due and payable pursuant to the Loan Documents; *second*, to interest then due and payable on the Borrowers' Swingline Loans; *third*, to the principal balance of the Swingline Loans outstanding until the same has been prepaid in full; *fourth*, to interest then due and payable on the Revolving Loans and other amounts due pursuant to Sections 3.02 and 5.01 in respect of the applicable Facility (other than the DIP Term Facility) subject to such mandatory prepayment; *fifth*, to the principal balance of the Revolving Loans in respect of the applicable Facility subject to such mandatory prepayment until the same have been prepaid in full; *sixth*, to Cash Collateralize all LC Exposure in respect of the applicable Facility (other than the DIP Term Facility) subject to such mandatory prepayment *plus* any accrued and unpaid interest thereon (to be held and applied in accordance with Section 2.13(j) hereof); *seventh*, to all other Obligations (other than DIP Term Obligations) *pro rata* in accordance with the amounts that such Lender certifies is outstanding; *eighth*, subject to the occurrence of Full Senior Obligation Repayment, to fees and reimbursable expenses of the DIP Term Lenders then due and payable pursuant to the Loan Documents; *ninth*, subject to the occurrence of Full Senior Obligation Repayment, to interest then due and payable on the DIP Term Loans and other amounts due pursuant to Sections 3.02 and 5.01 in respect of the DIP Term Facility subject to such mandatory prepayment; *tenth*, subject to the occurrence of Full Senior Obligation Repayment, to the principal balance of the DIP Term Loans until the same have been prepaid in full; *eleventh*, subject to the occurrence of Full Senior Obligation Repayment, to all other DIP Term Obligations *pro rata* in accordance with the amounts that such Lender certifies is outstanding; and *twelfth*, returned to the Lead Borrower or to such party as otherwise required by law; provided that, prior to the occurrence of the DIP Term Loan Closing Date, in respect of any mandatory prepayment from a Foreign Loan Party or funded with the net cash proceeds of a DIP Prepayment Event in respect of any Foreign Collateral, such proceeds will be applied *first*, to the Prepetition Obligations in accordance with Section 11.02(c) of the Prepetition Credit Agreement as amended by the Foreign Priority Waterfall until all Foreign Obligations (as defined in the Prepetition Credit Agreement) and any fees and all other expenses or amounts relating to such Foreign Obligations (as defined in the Prepetition Credit Agreement) shall have been paid in full in cash and (y) *second*, in accordance with clauses first to twelfth above.

(ii) Amounts to be applied pursuant to this Section 2.09 to the prepayment of Loans shall be applied first to reduce outstanding Base Rate Loans. Any amounts remaining after each such application shall be applied to prepay LIBO Rate Loans. Notwithstanding the foregoing, if the amount of any prepayment of Loans required under this Section 2.09 shall be in excess of the amount of the Base Rate Loans at the time outstanding, only the portion of the amount of such prepayment that is equal to the amount of such outstanding Base Rate Loans shall be immediately prepaid and, at the election of the applicable Borrower, the balance of such required prepayment shall be either (A) deposited in the LC Collateral Account and applied to the prepayment of LIBO Rate Loans on the last day of the then next-expiring Interest Period for such LIBO Rate Loans (with all interest accruing thereon for the account of the applicable Borrowers) or (B) prepaid immediately, together with any amounts owing to the Lenders under Section 2.10. Notwithstanding any such deposit in the LC Collateral Account, interest shall continue to accrue on such Loans until prepayment.

(d) Notice of Prepayment. The Lead Borrower shall notify the Administrative Agent (and, in the case of prepayment of a Swingline Loan, the Swingline Lender) by telephone (other than in the case of the requests in relation to Swiss Revolving Loans and Swingline Loans) (confirmed by telecopy) of any prepayment hereunder (i) in the case of prepayment of a Borrowing of LIBO Rate Loan, not later than 1:00 p.m., Local Time, three (3) Business Days before the date of prepayment, (ii) in the case of prepayment of a Borrowing of Base Rate Loans, not later than 1:00 p.m., Local Time, on the date of prepayment and (iii) in the case of prepayment of a Swingline Loan, not later than 1:00 p.m., Local Time, on the date of prepayment. Each such notice shall specify the prepayment date, the principal amount of each Borrowing or portion thereof to be prepaid and, in the case of a mandatory prepayment, a reasonably detailed calculation of the amount of such prepayment. Each notice of prepayment pursuant to this Section shall be irrevocable, except that the Lead Borrower may, by subsequent notice to the Administrative Agent, revoke any such notice of prepayment if such notice of revocation is received not later than 10:00 a.m. (New York City time) on the day on which such prepayment is scheduled to occur and, provided that (i) the Lead Borrower reimburses each applicable Lender pursuant to Section 3.02 for any funding losses within five (5) Business Days after receiving written demand therefor and (ii) the amount of Loans as to which such revocation applies shall be deemed converted to (or continued as, as applicable) Base Rate Loans (denominated in U.S. Dollars) or LIBO Rate Loans (not denominated in U.S. Dollars or Euros) with an Interest Period of one month, in accordance with the provisions of Section 2.08 as of the date of notice of revocation (subject to subsequent conversion in accordance with the provisions of this Agreement). Promptly following receipt of any such notice (other than a notice relating solely to Swingline Loans), the Administrative Agent shall advise the applicable Lenders of the contents thereof. Each partial prepayment of any Borrowing shall be in an amount that would be permitted in the case of an advance of a Borrowing of the same Type as provided in Section 2.02, except as necessary to apply fully the required amount of a mandatory prepayment. Each prepayment of a Borrowing shall be applied ratably to the Loans included in the prepaid Borrowing. Prepayments shall be accompanied by accrued interest to the extent required by Section 2.06.

(e) In the event that all or a portion of the DIP Term Loan are prepaid, either optionally or pursuant to any mandatory prepayment obligations, (unless such prepayment is made with the proceeds of a Qualified Sale in which the Stalking Horse Bidder is the winning bidder) the Lead Borrower shall pay a prepayment premium in an amount equal to 1.0% of the DIP Term Loans so prepaid. For the avoidance of doubt, any Lender that is replaced pursuant to Section 3.04(b) or Section 13.04 shall be entitled to receive the foregoing prepayment premium, which shall be payable by the Lead Borrower.

(f) If at any time the Aggregate First Out Obligations exceed the Aggregate First Out Obligation Cap, the Lead Borrower shall promptly repay the Revolving Loans in an amount equal to such excess.

Section 2.10 Payments Generally; Pro Rata Treatment; Sharing of Set-offs.

(a) Each Borrower shall make each payment required to be made by it hereunder or under any other Loan Document (whether of principal, interest, fees or reimbursement of LC Disbursements, or of amounts payable under Sections 3.01, 3.02, and 5.01 or otherwise) at or before the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to (x) 3:00 p.m., New York City time or (y) other Applicable Time specified by the Administrative Agent), on the date when due, in immediately available funds, without set-off or counterclaim. Except as otherwise expressly provided herein, all payments by the Borrowers hereunder with respect to principal and interest on Loans denominated in an Alternative Currency shall be made to the Administrative Agent, for the account of the respective Lenders to which such payment is owed, at the Administrative Agent's applicable office in such Alternative Currency and in same day funds not later than the Applicable Time specified by the Administrative Agent on the dates specified herein. Without limiting the generality of the

foregoing, the Administrative Agent may require that any payments due under this Agreement be made in the United States. If, for any reason, any Borrower is prohibited by any law from making any required payment hereunder in an Alternative Currency, such Borrower shall make such payment in U.S. Dollars in the Dollar Equivalent of the Alternative Currency payment amount. Any amounts received after such time on any date may, in the reasonable discretion of the Administrative Agent, be deemed to have been received on the next succeeding Business Day for purposes of calculating interest thereon. All such payments shall be made to the Administrative Agent at the Payment Office, except payments to be made directly to an Issuing Bank or Swingline Lender as expressly provided herein and except that payments pursuant to Sections 3.01, 3.02, 5.01 and 13.01 shall be made to the Administrative Agent for the benefit of to the Persons entitled thereto and payments pursuant to other Loan Documents shall be made to the Administrative Agent for the benefit of the Persons specified therein. The Administrative Agent shall distribute any such payments received by it for the account of any other Person to the appropriate recipient promptly following receipt thereof. If any payment under any Loan Document shall be due on a day that is not a Business Day, the date for payment shall be extended to the next succeeding Business Day, and, in the case of any payment accruing interest, interest thereon shall be payable for the period of such extension.

(b) If at any time insufficient funds are received by and available to the Administrative Agent to pay fully all amounts of principal, unreimbursed LC Disbursements, interest and fees then due hereunder, such funds shall be applied in the manner as provided in Section 2.09(c) or 11.02 hereof, as applicable, ratably among the parties entitled thereto.

(c) If any Lender shall, by exercising any right of set-off or counterclaim or otherwise, obtain payment in respect of any principal of or interest on any of its Loans or participations in LC Disbursements or Swingline Loans resulting in such Lender receiving payment of a greater proportion of the aggregate amount of its Loans and participations in LC Disbursements and Swingline Loans and accrued interest thereon than the proportion received by any other Lender under such Facility, then the Lender receiving such greater proportion shall purchase (for cash at face value) participations in the Loans and participations in LC Disbursements and Swingline Loans of other Lenders under such Facility to the extent necessary so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of principal of and accrued interest on their respective Loans and participations in LC Disbursements and Swingline Loans; provided that (i) if any such participations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations shall be rescinded and the purchase price restored to the extent of such recovery, without interest, and (ii) the provisions of this paragraph shall not be construed to apply to any payment made by the Lead Borrower pursuant to and in accordance with the express terms of this Agreement or any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans or participations in LC Disbursements to any assignee or participant, other than to the Lead Borrower or any Subsidiary or Affiliate thereof (as to which the provisions of this paragraph shall apply). Each Borrower consents to the foregoing and agrees, to the extent it may effectively do so under applicable law that any Lender acquiring a participation pursuant to the foregoing arrangements may exercise against the Loan Parties rights of set-off and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of a Loan Party in the amount of such participation.

(d) Unless the Administrative Agent shall have received, prior to any date on which any payment is due to the Administrative Agent for the account of the Lenders or, if applicable, an Issuing Bank pursuant to the terms hereof or any other Loan Document (including the date that is fixed for prepayment by notice from the Lead Borrower to the Administrative Agent pursuant to Section 2.09(d)), notice from any Borrower that such Borrower will not make such payment or prepayment, the Administrative Agent may assume that such Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders or, if applicable, the Issuing Banks, as the case may be, the amount due. In such event, if such Borrower has not in fact made such payment, then each of

the Lenders or, if applicable, the Issuing Banks under the applicable Facility, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender or, if applicable, Issuing Bank with interest thereon, for each day from and including the date such amount is distributed to it to but excluding the date of payment to the Administrative Agent, at the greater of the Federal Funds Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation.

(e) If any Lender shall fail to make any payment required to be made by it pursuant to Section 2.02(c), 2.02(f), 2.10(d), 2.12(d) or 2.13(d), then the Administrative Agent may, in its discretion (notwithstanding any contrary provision hereof), apply any amounts thereafter received by the Administrative Agent for the account of such Lender to satisfy such Lender's obligations under such Sections until all such unsatisfied obligations are fully paid.

Section 2.11 Defaulting Lenders.

(a) Reallocation of Pro Rata Share; Amendments. For purposes of determining the Lenders' obligations to fund or acquire participations in Loans or Letters of Credit, the Administrative Agent may exclude the Commitments and Loans of any Defaulting Lender(s) from the calculation of Pro Rata Shares. A Defaulting Lender shall have no right to vote on any amendment, waiver or other modification of a Loan Document, except as provided in Section 13.12; provided that when a Defaulting Lender shall exist, any such Defaulting Lender's Revolving Commitment shall be disregarded in any of such calculations to the extent that disregarding the applicable Revolving Commitments would not cause the Revolving Exposure of any Lender under any Facility to exceed the amount of such Lender's Revolving Commitment under such Facility.

(b) Payments; Fees. The Administrative Agent may, in its discretion, receive and retain any amounts payable to a Defaulting Lender under the Loan Documents, and a Defaulting Lender shall be deemed to have assigned to the Administrative Agent such amounts until all Obligations owing to the Administrative Agent, Non-Defaulting Lenders and other Secured Parties have been paid in full. The Administrative Agent may apply such amounts to the Defaulting Lender's defaulted obligations, use the funds to Cash Collateralize such Lender's Fronting Exposure, or readvance the amounts to the Borrowers hereunder. A Lender shall not be entitled to receive any fees accruing hereunder during the period in which it is a Defaulting Lender, and the unfunded portion of its Commitment shall be disregarded for purposes of calculating the Unused Line Fee under Section 2.05(a). To the extent any LC Exposure attributable to a Defaulting Lender is reallocated to other Lenders, LC Participation Fees attributable to such LC Exposure under Section 2.05(c) shall be paid to such other Lenders. If all or any portion of the LC Exposure attributable to a Defaulting Lender is neither reallocated to other Lenders nor Cash Collateralized, then LC Participation Fees attributable to such LC Exposure shall be payable to the respective Issuing Banks until, and to the extent that, such LC Exposure is reallocated and/or Cash Collateralized.

(c) Defaulting Lender Waterfall. Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of a Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Article 11 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Section 13.02 shall be applied at such time or times as may be determined by the Administrative Agent as follows: *first*, to the payment of any amounts owing by such Defaulting Lender to the Administrative Agent hereunder; *second*, to the payment on a pro rata basis of any amounts owing by such Defaulting Lender to any Issuing Bank or Swingline Lender hereunder; *third*, to Cash Collateralize the Issuing Banks' Fronting Exposure with respect to such Defaulting Lender in accordance with Section 2.11; *fourth*, as the Lead Borrower may request (so long as no Default or Event of Default exists), to the funding of any Loan in respect of which such Defaulting Lender has failed to fund its portion thereof as required by this Agreement, as determined by the Administrative Agent; *fifth*, if so determined

by the Administrative Agent and the Borrower, to be held in a deposit account and released pro rata in order to (x) satisfy such Defaulting Lender's potential future funding obligations with respect to Loans under this Agreement and (y) Cash Collateralize the Issuing Banks' future Fronting Exposure with respect to such Defaulting Lender with respect to future Letters of Credit issued under this Agreement, in accordance with Section 2.11; *sixth*, to the payment of any amounts owing to the Lenders, the Issuing Banks or the Swingline Lender as a result of any judgment of a court of competent jurisdiction obtained by any Lender, the Issuing Banks or the Swingline Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *seventh*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Lead Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Lead Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *eighth*, to such Defaulting Lender or as otherwise directed by a court of competent jurisdiction; provided that if (x) such payment is a payment of the principal amount of any Loans or LC Disbursements in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Loans were made or the related Letters of Credit were issued at a time when the conditions set forth in Section 6.03 were satisfied or waived, such payment shall be applied solely to pay the Loans of, and LC Disbursements owed to, all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Loans of, or LC Disbursements owed to, such Defaulting Lender until such time as all Loans and funded and unfunded participations in LC Obligations and Swingline Loans are held by the Lenders pro rata in accordance with the Commitments; provided further that any payment to a Defaulting Lender that is a DIP Term Lender shall only be made after Full Senior Obligation Repayment has occurred. Any payments, prepayments or other amounts paid or payable to a Defaulting Lender that are applied (or held) to pay amounts owed by a Defaulting Lender or to post Cash Collateral pursuant to this Section shall be deemed paid to and redirected by such Defaulting Lender, and each Lender irrevocably consents hereto.

(d) Cure. The Lead Borrower, Administrative Agent and applicable Issuing Bank may reasonably agree in writing that a Lender is no longer a Defaulting Lender. At such time, Pro Rata Shares shall be reallocated without exclusion of such Lender's Commitments and Loans, and all outstanding Loans, LC Obligations and other exposures under the Commitments shall be reallocated among Lenders and settled by the Administrative Agent (with appropriate payments by the reinstated Lender) in accordance with the readjusted Pro Rata Shares. Unless expressly agreed by the Lead Borrower, Administrative Agent and applicable Issuing Bank, no reinstatement of a Defaulting Lender shall constitute a waiver or release of claims against such Lender. The failure of any Lender to fund a Loan, to make a payment in respect of LC Obligations or otherwise to perform its obligations hereunder shall not relieve any other Lender of its obligations, and no Lender shall be responsible for default by another Lender.

Section 2.12 Swingline Loans.

(a) Swingline Commitment. Subject to the terms and conditions set forth herein, the Swingline Lender may, but shall not be obligated to, (i) make Swingline Loans ("North American Swingline Loans") in U.S. Dollars to the U.S. Borrowers on behalf of the North American Revolving Lenders in an aggregate amount not to exceed $40,000,000 and (ii) make Swingline Loans ("Swiss Swingline Loans"; the North American Swingline Loans and the Swiss Swingline Loans are collectively referred to herein as the "Swingline Loans") in Swiss Francs or any Alternative Currency to any Borrower on behalf of the Swiss Revolving Lenders in an aggregate amount not to exceed $5,000,000, in each case, from time to time during the Revolving Availability Period so long as the making of any such Swingline Loans will not result in (x) the Dollar Equivalent of the aggregate principal amount of outstanding Swingline Loans exceeding 10% of the Aggregate Revolving Commitment or (y) the failure to satisfy the Availability Conditions; provided that the Swingline Lender shall not be required to make a Swingline Loan to refinance an outstanding Swingline Loan. Within the foregoing limits and subject to the terms and conditions set forth herein, the Lead Borrower may borrow, repay and reborrow Swingline Loans.

(b) Swingline Loans. To request a Swingline Loan, the applicable Borrower shall notify the Administrative Agent of such request by telephone (confirmed by telecopy), not later than 12:00 Noon, Local Time, on the day of (or, in the case of a proposed Swingline Loan in Australian Dollars or Swiss Francs, one Business Day prior to) a proposed Swingline Loan. Each such notice shall be irrevocable and specify (i) the requested date (which shall be a Business Day), (ii) the Borrower requesting such Swingline Loan, (iii) the requested currency of such Swingline Loans and (iv) amount of the requested Swingline Loan. The Administrative Agent will promptly advise the Swingline Lender of any such notice received from any Borrower. Each North American Swingline Loan made in U.S. Dollars shall be a Base Rate Loan. Each Swiss Swingline Loan shall be an Overnight LIBO Rate Loan (or, in the case of any Swiss Swingline Loan denominated in Australian Dollars, a Loan which bears interest at the AUD Rate). The Swingline Lender shall make each Swingline Loan available to the applicable Borrower by means of a credit to the general deposit account of such Borrower with the Swingline Lender (or, in the case of a Swingline Loan made to finance the reimbursement of an LC Disbursement as provided in Section 2.13(e), by remittance to the applicable Issuing Bank) by 5:00 p.m., Local Time, on the requested date of such Swingline Loan. No Borrower may request a Swingline Loan if at the time of and immediately after giving effect to such request a Default has occurred and is continuing. Swingline Loans shall be made in minimum amounts of $100,000 or the Dollar Equivalent amount thereof.

(c) Prepayment. The applicable Borrowers shall have the right at any time and from time to time to repay, without premium or penalty, any Swingline Loan, in whole or in part, upon giving written or telecopy notice (or telephone notice promptly confirmed by written, or telecopy notice) to the Swingline Lender and to the Administrative Agent before 4:00 p.m., London time on (or, in the case of any Swingline Loan denominated in Australian Dollars or Swiss Francs, one Business Day prior to) the date of repayment at the Swingline Lender's address for notices specified in the Swingline Lender's Administrative Questionnaire. All principal payments of Swingline Loans shall be accompanied by accrued interest on the principal amount being repaid to the date of payment.

(d) Participations. The Swingline Lender may by written notice given to the Administrative Agent not later than 12:00 p.m., Local Time, on (or, in the case of any Swingline Loan denominated in Australian Dollars or Swiss Francs, one Business Day prior to) any Business Day require the Revolving Lenders under the applicable Facility to acquire participations on such Business Day in all or a portion of the Swingline Loans outstanding under such Facility. Such notice shall specify the aggregate amount of Swingline Loans in which Revolving Lenders will participate. Promptly upon receipt of such notice, the Administrative Agent will give notice thereof to such Revolving Lender, specifying in such notice such Revolving Lender's Pro Rata Percentage (with respect to the applicable Facility) of such Swingline Loan or Loans. Each Revolving Lender hereby absolutely and unconditionally agrees, upon receipt of notice as provided above, to pay to the Administrative Agent, for the account of the Swingline Lender, such Revolving Lender's Pro Rata Percentage (with respect to the applicable Facility) of such Swingline Loan or Loans. Each Revolving Lender acknowledges and agrees that its obligation to acquire participations in Swingline Loans pursuant to this paragraph is absolute and unconditional and shall not be affected by any circumstance whatsoever, including the occurrence and continuance of a Default or reduction or termination of the Aggregate Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever (provided that such payment shall not cause such Revolving Lender's Revolving Exposure to exceed such Revolving Lender's Revolving Commitment). Each Revolving Lender shall comply with its obligation under this paragraph by wire transfer of immediately available funds, in the same manner as provided in Section 2.14 with respect to Loans made by such Revolving Lender (and Section 2.02 shall apply, *mutatis mutandis*, to the payment obligations of the Revolving Lenders), and the Administrative Agent shall promptly pay to the Swingline Lender the amounts so received by it from the Revolving Lenders. The Administrative Agent shall notify the Lead Borrower of any participations in any Swingline Loan acquired pursuant to this paragraph, and thereafter payments in respect of such Swingline Loan shall be made to the Administrative Agent and not to the

Swingline Lender. Any amounts received by the Swingline Lender from the Lead Borrower (or other party on behalf of the Lead Borrower) in respect of a Swingline Loan after receipt by the Swingline Lender of the proceeds of a sale of participations therein shall be promptly remitted to the Administrative Agent; any such amounts received by the Administrative Agent shall be promptly remitted by the Administrative Agent to the applicable Revolving Lenders that shall have made their payments pursuant to this paragraph and to the Swingline Lender, as their interests may appear. The purchase of participations in a Swingline Loan pursuant to this paragraph shall not relieve any Borrower of any default in the payment thereof.

Section 2.13 Letters of Credit.

(a) General. Subject to the terms and conditions set forth herein, (x) the Lead Borrower may request the issuance of North American Letters of Credit in U.S. Dollars or in one or more applicable Alternative Currencies (if any) for any U.S. Borrower's account or the account of a Subsidiary of the Lead Borrower in a form reasonably acceptable to the Administrative Agent and the applicable North American Issuing Bank, at any time and from time to time during the Revolving Availability Period; provided that the Lead Borrower shall be a co-applicant with respect to each North American Letter of Credit issued for the account of or in favor of any Subsidiary that is not a U.S. Borrower and (y) the Swiss Borrower may request the issuance of Swiss Letters of Credit in Swiss Francs or in one or more applicable Alternative Currencies (if any) for the Swiss Borrower's account or the account of a Subsidiary of the Swiss Borrower in a form reasonably acceptable to the Administrative Agent and the applicable Swiss Issuing Bank, at any time and from time to time during the Revolving Availability Period; provided that, with respect to each Letter of Credit issued for the account of or in favor of any Subsidiary that is not the Swiss Borrower but is a Subsidiary of the Swiss Borrower, the Swiss Borrower shall be a co-applicant. In the event of any inconsistency between the terms and conditions of this Agreement and the terms and conditions of any form of letter of credit application or other agreement submitted by a Borrower to, or entered into by any Borrower with, the applicable Issuing Bank relating to any Letter of Credit, the terms and conditions of this Agreement shall control. Notwithstanding anything to the contrary in this Agreement, all Existing Letters of Credit shall be deemed issued under this Agreement from and after the DIP Closing Date and shall be a North American Letter of Credit or Swiss Letter of Credit, as applicable, for purposes of this Agreement. If the Borrowers request any Issuing Bank to issue a Letter of Credit for an affiliated or unaffiliated third party (including a Subsidiary) (an "Account Party"), (i) such Account Party shall have no rights against such Issuing Bank; (ii) the Borrowers shall be responsible for the application and obligations under this Agreement; and (iii) communications (including notices) related to the respective Letter of Credit shall be among such Issuing Bank, the Administrative Agent and the Borrowers.

(b) Request for Issuance, Amendment, Renewal, Extension; Certain Conditions. To request the issuance of a Letter of Credit or the amendment, renewal or extension of an outstanding Letter of Credit, a Borrower shall hand deliver or telecopy (or transmit by electronic communication, if arrangements for doing so have been approved by the applicable Issuing Bank) an LC Request to the applicable Issuing Bank and the Administrative Agent not later than the Applicable Time specified by the Administrative Agent on the third Business Day preceding the requested date of issuance, amendment, renewal or extension (or such later date and time as is reasonably acceptable to the applicable Issuing Bank). A request for an initial issuance of a Letter of Credit shall specify in form and detail reasonably satisfactory to the applicable Issuing Bank: (i) the proposed issuance date of the requested Letter of Credit (which shall be a Business Day); (ii) whether such Letter of Credit shall be a North American Letter of Credit or a Swiss Letter of Credit; (iii) the amount and currency thereof; (iv) the expiry date thereof; (v) the name and address of the beneficiary thereof; (vi) the documents to be presented by such beneficiary in case of any drawing thereunder; (vii) the full text of any certificate to be presented by such beneficiary in case of any drawing thereunder; and (viii) such other matters as the applicable Issuing Bank may reasonably require and shall attach the agreed form of the Letter of Credit. A request for an amendment, renewal or extension of any outstanding Letter of Credit shall specify in form and detail reasonably satisfactory to the applicable Issuing

Bank, (w) the Letter of Credit to be amended, renewed or extended; (x) the proposed date of amendment, renewal or extension thereof (which shall be a Business Day), (y) the nature of the proposed amendment, renewal or extension; and (z) such other matters as the applicable Issuing Bank may reasonably require. If requested by the applicable Issuing Bank, the applicable Borrower also shall submit a letter of credit application substantially on such Issuing Bank's standard form in connection with any request for a Letter of Credit. A Letter of Credit shall be issued, amended, renewed or extended only if (and upon issuance, amendment, renewal or extension of each Letter of Credit, the applicable Borrower shall be deemed to represent and warrant (solely in the case of (w) and (x)) that, after giving effect to such issuance, amendment, renewal or extension) (A) other than in the case of Existing Letters of Credit and any renewals or extensions thereof, the LC Exposure shall not exceed $6,000,000 (the "LC Sublimit"), (B) other than in the case of Existing Letters of Credit and any renewals or extensions thereof, the North American LC Exposure shall not exceed $4,000,000 (the "North American LC Sublimit"), (C) the Swiss LC Exposure shall not exceed $2,000,000 (the "Swiss LC Sublimit"), (D) the Availability Conditions are satisfied, (E) other than in the case of Existing Letters of Credit and any renewals or extensions thereof, the North American LC Exposure attributable to North American Letters of Credit issued by any North American Issuing Bank shall not exceed the Dollar Equivalent of such North American Issuing Bank's North American Issuing Bank Sublimit, (F) the Swiss LC Exposure attributable to Swiss Letters of Credit issued by any Swiss Issuing Bank shall not exceed the Dollar Equivalent of such Swiss Issuing Bank's Swiss Issuing Bank Sublimit and (G) if a Defaulting Lender that is a Revolving Lender exists, either such Revolving Lender or the Lead Borrower has entered into arrangements satisfactory to the Administrative Agent and the applicable Issuing Bank to eliminate any Fronting Exposure associated with such Revolving Lender.

(c) Expiration Date. Each Letter of Credit shall expire at or prior to the close of business on the earlier of (x) the date which is one year after the date of the issuance of such Letter of Credit (or such other longer period of time as the Administrative Agent and the applicable Issuing Bank may agree and, in the case of any renewal or extension thereof, one (1) year after such renewal or extension) and, (y) unless Cash Collateralized or otherwise credit supported or agreed to the reasonable satisfaction of the Administrative Agent and the applicable Issuing Bank (in which case the expiry may extend no longer than twelve (12) months after the Letter of Credit Expiration Date) the Letter of Credit Expiration Date. Each Letter of Credit may, upon the request of the Lead Borrower, include a provision whereby such Letter of Credit shall be renewed automatically for additional consecutive periods of twelve (12) months or less (but, subject to the foregoing, not beyond the date that is after the Letter of Credit Expiration Date) unless the applicable Issuing Bank notifies the beneficiary thereof at least thirty (30) days prior to the then-applicable expiration date that such Letter of Credit will not be renewed.

(d) Participations.

(i) By the issuance of a North American Letter of Credit (or an amendment to a North American Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable North American Issuing Bank or the North American Revolving Lenders, the applicable North American Issuing Bank hereby grants to each North American Revolving Lender, and each such North American Revolving Lender hereby acquires from such North American Issuing Bank, a participation in such North American Letter of Credit equal to such North American Revolving Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such North American Letter of Credit. In consideration and in furtherance of the foregoing, each North American Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable North American Issuing Bank, such North American Revolving Lender's Pro Rata Percentage of each North American LC Disbursement made by the applicable North American Issuing Bank and not reimbursed by the U.S. Borrowers on the date due as provided in paragraph (e) of this Section 2.13, or of any reimbursement payment

required to be refunded to the U.S. Borrowers for any reason. Each applicable Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of North American Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any North American Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Aggregate Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(ii) By the issuance of a Swiss Letter of Credit (or an amendment to a Swiss Letter of Credit increasing the amount thereof) and without any further action on the part of the applicable Swiss Issuing Bank or the Swiss Revolving Lenders, the applicable Swiss Issuing Bank hereby grants to each Swiss Revolving Lender, and each such Swiss Revolving Lender hereby acquires from such Swiss Issuing Bank, a participation in such Swiss Letter of Credit equal to such Swiss Revolving Lender's Pro Rata Percentage of the aggregate amount available to be drawn under such Swiss Letter of Credit. In consideration and in furtherance of the foregoing, each Swiss Revolving Lender hereby absolutely and unconditionally agrees to pay to the Administrative Agent, for the account of the applicable Swiss Issuing Bank, such Swiss Revolving Lender's Pro Rata Percentage of each Swiss LC Disbursement made by the applicable Swiss Issuing Bank and not reimbursed by the Swiss Borrower on the date due as provided in paragraph (e) of this Section 2.13, or of any reimbursement payment required to be refunded to the Swiss Borrower for any reason. Each applicable Revolving Lender acknowledges and agrees that its obligation to acquire participations pursuant to this paragraph in respect of Swiss Letters of Credit is absolute and unconditional and shall not be affected by any circumstance whatsoever, including any amendment, renewal or extension of any Swiss Letter of Credit or the occurrence and continuance of a Default or reduction or termination of the Aggregate Revolving Commitments, and that each such payment shall be made without any offset, abatement, withholding or reduction whatsoever.

(e) Reimbursement.

(i) If any North American Issuing Bank shall make any North American LC Disbursement in respect of a North American Letter of Credit, the U.S. Borrowers shall reimburse such North American LC Disbursement by paying to the applicable North American Issuing Bank an amount equal to such North American LC Disbursement not later than (x) in the case of reimbursement in U.S. Dollars, 2:00 p.m., New York City time, on the Business Day after receiving notice from such North American Issuing Bank of such North American LC Disbursement or (y) in the case of reimbursement in an Alternative Currency, the Applicable Time specified by the Administrative Agent on the Business Day after receiving notice from such North American Issuing Bank of such North American LC Disbursement; provided that, whether or not the Lead Borrower submits a Notice of Borrowing, the applicable U.S. Borrower shall be deemed to have requested (except to the extent such U.S. Borrower makes payment to reimburse such North American LC Disbursement when due) a Borrowing of Base Rate Loans (with respect to North American Letters of Credit in U.S. Dollars) or LIBO Rate Loans under the North American Revolving Facility with an Interest Period of one month (with respect to North American Letters of Credit in a currency other than U.S. Dollars) in an amount necessary to reimburse such North American LC Disbursement. If such U.S. Borrower fails to make such payment when due, the applicable North American Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each North American Revolving Lender of the applicable North American LC Disbursement, the payment then due from such U.S. Borrower in respect thereof and such North American Revolving Lender's Pro Rata Percentage thereof. Promptly following receipt of such notice, each such North American Revolving Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed North American LC Disbursement (in U.S. Dollars, if the

applicable North American Letter of Credit was denominated in U.S. Dollars, or in the applicable Alternative Currency, if the applicable North American Letter of Credit was denominated in an Alternative Currency) in the same manner as provided in Section 2.02(f) with respect to Loans made by such North American Revolving Lender, and the Administrative Agent shall promptly pay to the applicable North American Issuing Bank the amounts so received by it from such North American Revolving Lenders. In the case of a North American Letter of Credit denominated in an Alternative Currency, the applicable U.S. Borrower shall reimburse the applicable North American Issuing Bank in such Alternative Currency, unless (A) such North American Issuing Bank (at its option) shall have specified in such notice that it will require reimbursement in U.S. Dollars, or (B) in the absence of any such requirement for reimbursement in U.S. Dollars, the applicable U.S. Borrower shall have notified such North American Issuing Bank promptly following receipt of the notice of drawing that such U.S. Borrower will reimburse such North American Issuing Bank in U.S. Dollars. In the case of any such reimbursement in U.S. Dollars of a drawing under a North American Letter of Credit denominated in an Alternative Currency, the applicable North American Issuing Bank shall notify the applicable U.S. Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Promptly following receipt by the Administrative Agent, of any payment from the U.S. Borrowers pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable North American Issuing Bank. Any payment made by a North American Revolving Lender pursuant to this paragraph to reimburse a North American Issuing Bank for any North American LC Disbursement (other than the funding of Base Rate Loans or LIBO Rate Loans as contemplated above) shall not constitute a North American Revolving Loan and shall not relieve any U.S. Borrower of its obligation to reimburse such North American LC Disbursement. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in U.S. Dollars pursuant to the third sentence in this Section 2.13(e)(i) and (B) the U.S. Dollar amount paid by the U.S. Borrowers shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in the Alternative Currency equal to the drawing, the U.S. Borrowers agree, as a separate and independent obligation, to indemnify the applicable North American Issuing Bank for the loss resulting from its inability on that date to purchase the Alternative Currency in the full amount of the drawing.

(ii) If any Swiss Issuing Bank shall make any Swiss LC Disbursement in respect of a Swiss Letter of Credit, the Swiss Borrower shall reimburse such Swiss LC Disbursement by paying to the applicable Swiss Issuing Bank an amount equal to such Swiss LC Disbursement not later than the Applicable Time specified by the Administrative Agent on the Business Day after receiving notice from such Swiss Issuing Bank of such Swiss LC Disbursement; provided that, whether or not the Swiss Borrower submits a Notice of Borrowing, the Swiss Borrower shall be deemed to have requested (except to the extent the Swiss Borrower makes payment to reimburse such Swiss LC Disbursement when due) a Borrowing of LIBO Rate Loans under the Swiss Revolving Facility of the Swiss Borrower with an Interest Period of one month in an amount necessary to reimburse such Swiss LC Disbursement. If the Swiss Borrower fails to make such payment when due, the applicable Swiss Issuing Bank shall notify the Administrative Agent and the Administrative Agent shall notify each Swiss Revolving Lender of the applicable Swiss LC Disbursement, the payment then due from the Swiss Borrower in respect thereof and such Swiss Revolving Lender's Pro Rata Percentage thereof. Promptly following receipt of such notice, each such Swiss Revolving Lender shall pay to the Administrative Agent its Pro Rata Percentage of the unreimbursed Swiss LC Disbursement in the applicable Alternative Currency in the same manner as provided in Section 2.02(f) with respect to Loans made by such Swiss Revolving Lender, and the Administrative Agent shall promptly pay to the applicable Swiss Issuing Bank the amounts so received by it from such Swiss Revolving Lenders. The Swiss Borrower shall reimburse the applicable Swiss Issuing Bank in such Alternative Currency, unless (A) such Swiss Issuing Bank

(at its option) shall have specified in such notice that it will require reimbursement in U.S. Dollars or a different Alternative Currency, or (B) in the absence of any such requirement for reimbursement in U.S. Dollars or a different Alternative Currency, the Swiss Borrower shall have notified such Swiss Issuing Bank promptly following receipt of the notice of drawing that the Swiss Borrower will reimburse such Swiss Issuing Bank in Alternative Currency. In the case of any such reimbursement in an Alternative Currency of a drawing under a Swiss Letter of Credit denominated in Swiss Francs, the applicable Swiss Issuing Bank shall notify the Swiss Borrower of the Dollar Equivalent of the amount of the drawing promptly following the determination thereof. Promptly following receipt by the Administrative Agent, of any payment from the Swiss Borrower pursuant to this paragraph, the Administrative Agent shall distribute such payment to the applicable Swiss Issuing Bank. Any payment made by a Swiss Revolving Lender pursuant to this paragraph to reimburse a Swiss Issuing Bank for any Swiss LC Disbursement (other than the funding of LIBO Rate Loans as contemplated above) shall not constitute a Swiss Revolving Loan and shall not relieve the Swiss Borrower of its obligation to reimburse such Swiss LC Disbursement. In the event that (A) a drawing denominated in an Alternative Currency is to be reimbursed in U.S. Dollars or a different Alternative Currency pursuant to the third sentence in this Section 2.13(e)(ii) and (B) the amount paid by the Swiss Borrower shall not be adequate on the date of that payment to purchase in accordance with normal banking procedures a sum denominated in Swiss Francs equal to the drawing, the Swiss Borrower agrees, as a separate and independent obligation, to indemnify the applicable Swiss Issuing Bank for the loss resulting from its inability on that date to purchase Swiss Francs in the full amount of the drawing.

(f) Obligations Absolute.

(i) Subject to the limitations set forth below, the obligation of the Borrowers to reimburse LC Disbursements as provided in paragraph (e) of this Section 2.13 shall be absolute, unconditional and irrevocable, and shall be performed strictly in accordance with the terms of this Agreement under any and all circumstances whatsoever and irrespective of (i) any lack of validity or enforceability of any Letter of Credit or this Agreement, or any term or provision therein, (ii) any draft or other document presented under a Letter of Credit proving to be forged, fraudulent or invalid in any respect or any statement therein being untrue or inaccurate in any respect, (iii) payment by any Issuing Bank under a Letter of Credit against presentation of a draft or other document that does not strictly comply with the terms of such Letter of Credit, (iv) the existence of any claim, setoff, defense or other right which any Borrower may have at any time against a beneficiary of any Letter of Credit, (v) any adverse change in the relevant exchange rates or in the availability of the relevant Alternative Currency to any Borrower or any Subsidiary or in the relevant currency markets generally or (vi) any other event or circumstance whatsoever, whether or not similar to any of the foregoing, that might, but for the provisions of this Section 2.13(f), constitute a legal or equitable discharge of, or provide a right of setoff against, the obligations of the Borrowers hereunder. None of the Administrative Agent, the Revolving Lenders or any Issuing Bank, or any of their respective Affiliates, shall have any liability or responsibility by reason of or in connection with the issuance or transfer of any Letter of Credit or any payment or failure to make any payment thereunder (irrespective of any of the circumstances referred to in the preceding sentence), or any error, omission, interruption, loss or delay in transmission or delivery of any draft, notice or other communication under or relating to any Letter of Credit (including any document required to make a drawing thereunder), any error in interpretation of technical terms or any consequence arising from causes beyond the control of any Issuing Bank; provided that the foregoing shall not be construed to excuse any Issuing Bank from liability to the Borrowers to the extent of any direct damages (as opposed to special, indirect, consequential or punitive damages, claims in respect of which are hereby waived by each Borrower to the extent permitted by applicable law) suffered by the Borrowers that are caused by such Issuing Bank's failure to exercise

care when determining whether drafts and other documents presented under a Letter of Credit comply with the terms thereof. The parties hereto expressly agree that, in the absence of gross negligence, willful misconduct, or bad faith on the part of any Issuing Bank (as finally determined by a court of competent jurisdiction in a final non-appealable judgment), such Issuing Bank shall be deemed to have exercised care in each such determination. In furtherance of the foregoing and without limiting the generality thereof, the parties agree that, with respect to documents presented which appear on their face to be in substantial compliance with the terms of a Letter of Credit, each Issuing Bank may, in its sole discretion, either accept and make payment upon such documents without responsibility for further investigation, regardless of any notice or information to the contrary, or refuse to accept and make payment upon such documents if such documents are not in strict compliance with the terms of such Letter of Credit.

(ii) No Issuing Bank assumes any responsibility for any failure or delay in performance or any breach by any Borrower or other Person of any obligations under any LC Document. No Issuing Bank makes to the Revolving Lenders any express or implied warranty, representation or guaranty with respect to the Collateral, such documents or any Loan Party. No Issuing Bank shall be responsible to any Revolving Lender for any recitals, statements, information, representations or warranties contained in, or for the execution, validity, genuineness, effectiveness or enforceability of any LC Document; the validity, genuineness, enforceability, collectability, value or sufficiency of any Collateral or the perfection of any Lien therein; or the assets, liabilities, financial condition, results of operations, business, creditworthiness or legal status of any Loan Party.

(iii) No Issuing Bank or any of its Affiliates, and their respective officers, directors, employees, agents and investment advisors shall be liable to any Revolving Lender or other Person for any action taken or omitted to be taken in connection with any LC Documents except as a result of its actual gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment. No Issuing Bank shall have any liability to any Revolving Lender if such Issuing Bank refrains from any action under any Letter of Credit or such LC Documents until it receives written instructions from the Required Revolving Lenders.

(g) Disbursement Procedures. Each Issuing Bank shall, within the period stipulated by the terms and conditions of a Letter of Credit, following its receipt thereof, examine all documents purporting to represent a demand for payment under such Letter of Credit. Promptly after such examination, such Issuing Bank shall notify the Administrative Agent and the Lead Borrower or the Swiss Borrower by telephone (confirmed by telecopy and/or electronically) of such demand for payment and whether such Issuing Bank has made or will make an LC Disbursement thereunder; provided that any failure to give or delay in giving such notice shall not relieve any Borrower of its obligation to reimburse such Issuing Bank and the Revolving Lenders with respect to any such LC Disbursement (other than with respect to the timing of such reimbursement obligation set forth in Section 2.13(e)).

(h) Interim Interest. If any Issuing Bank shall make any LC Disbursement, then, unless the applicable Borrower shall reimburse such LC Disbursement in full on the date such LC Disbursement is made, the unpaid amount thereof shall bear interest, for each day from and including the date such LC Disbursement is made to but excluding the date that such Borrower reimburses such LC Disbursement, at the rate per annum then applicable to Base Rate Loans; provided that, if such Borrower fails to reimburse such LC Disbursement when due pursuant to paragraph (e) of this Section 2.13, then Section 2.06(b) shall apply. Interest accrued pursuant to this paragraph shall be for the account of the applicable Issuing Bank, except that interest accrued on and after the date of payment by any Revolving Lender pursuant to paragraph (e) of this Section 2.13 to reimburse such Issuing Bank shall be for the account of such Revolving Lender to the extent of such payment.

(i) Resignation or Removal of any Issuing Bank. Any Issuing Bank may resign as Issuing Bank hereunder at any time upon at least thirty (30) days' prior written notice to the Revolving Lenders, the Administrative Agent and the Lead Borrower. Any Issuing Bank may be replaced at any time by agreement between the Lead Borrower and the Administrative Agent; provided that so long as no Event of Default has occurred and is continuing under Section 11.01(b), 11.01(c), 11.01(h), 11.01(i) or 11.01(j), such successor Issuing Bank shall be reasonably acceptable to the Lead Borrower. One or more Revolving Lenders may be appointed as additional Issuing Banks in accordance with paragraph (k) below. The Administrative Agent shall notify the Revolving Lenders of any such replacement of such Issuing Bank or any such additional Issuing Bank. At the time any such resignation or replacement shall become effective, the Lead Borrower shall pay all unpaid fees accrued for the account of the replaced Issuing Bank pursuant to Section 2.05(c). From and after the effective date of any such resignation or replacement or addition, as applicable, (i) the successor or additional Issuing Bank shall have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit to be issued thereafter and (ii) references herein to the term "Issuing Bank" shall be deemed to refer to such successor or such addition or to any previous Issuing Bank, or to such successor or such additional Issuing Bank and all previous Issuing Banks, as the context shall require. After the resignation or replacement of an Issuing Bank hereunder, the replaced Issuing Bank shall remain a party hereto and shall continue to have all the rights and obligations of an Issuing Bank under this Agreement with respect to Letters of Credit issued by it prior to such resignation or replacement, but shall not be required to issue additional Letters of Credit. If at any time there is more than one Issuing Bank hereunder, the Lead Borrower may, in its discretion, select which Issuing Bank is to issue any particular Letter of Credit.

(j) Cash Collateralization.

(i) If any Event of Default shall occur and be continuing, on the Business Day that the Lead Borrower receives notice from the Administrative Agent (acting at the request of the Required Revolving Lenders) demanding the deposit of Cash Collateral pursuant to this paragraph, the Lead Borrower shall deposit in the LC Collateral Account, in the name of the Administrative Agent and for the benefit of the Secured Parties, an amount in cash equal to 103% (or, in the case of Letters of Credit issued in any currency other than U.S. Dollars, 105%) of the LC Exposure as of such date. Each such deposit shall be held by the Administrative Agent as collateral for the payment and performance of the obligations of the Lead Borrower under this Agreement, but shall be immediately released and returned to the Lead Borrower (in no event later than two (2) Business Days) once all Events of Default are cured or waived. The Administrative Agent shall have exclusive dominion and control, including the exclusive right of withdrawal, over such account. Other than any interest earned on the investment of such deposits, which investments shall be made only in Cash Equivalents and at the direction of the Lead Borrower and at the Lead Borrower's risk and expense, such deposits shall not bear interest. Interest or profits, if any, on such investments shall accumulate in such account. Moneys in such account shall be applied by the Administrative Agent to reimburse the Issuing Banks for LC Disbursements for which they have not been reimbursed and, to the extent not so applied, shall be held for the satisfaction of the reimbursement obligations of the Lead Borrower for the LC Exposure at such time or, if the maturity of the Loans has been accelerated (but subject to the consent of Revolving Lenders with LC Exposure representing greater than 50% of the total LC Exposure), be applied to satisfy other Obligations of the Lead Borrower.

(ii) The Lead Borrower shall, on demand by an Issuing Bank or the Administrative Agent from time to time, Cash Collateralize the Fronting Exposure associated with any Defaulting Lender that is a Revolving Lender.

(k) Additional Issuing Banks. The Lead Borrower may, at any time and from time to time with the consent of the Administrative Agent (which consent shall not be unreasonably withheld, delayed or conditioned) and such Revolving Lender, designate one or more additional North American Revolving Lenders or Swiss Revolving Lenders to act as a North American Issuing Bank or a Swiss Issuing Bank, respectively, under the terms of this Agreement. Any Revolving Lender designated as an issuing bank pursuant to this paragraph (k) shall be deemed (in addition to being a Lender) to be an Issuing Bank with respect to Letters of Credit issued or to be issued by such Revolving Lender, and all references herein and in the other Loan Documents to the term "Issuing Bank", "North American Issuing Bank" and/or "Swiss Issuing Bank", as applicable, shall, with respect to such Letters of Credit, be deemed to refer to such Revolving Lender in its capacity as Issuing Bank, North American Issuing Bank and/or Swiss Issuing Bank, as the context shall require.

(l) No Issuing Bank shall be under an obligation to issue any Letter of Credit if:

(i) any order, judgment or decree of any Governmental Authority or arbitrator shall by its terms purport to enjoin or restrain such Issuing Bank from issuing such Letter of Credit, or any law applicable to such Issuing Bank or any request or directive (whether or not having the force of law) from any Governmental Authority with jurisdiction over such Issuing Bank shall prohibit, or request that such Issuing Bank refrain from, the issuance of letters of credit generally or such Letter of Credit in particular or shall impose upon such Issuing Bank with respect to such Letter of Credit any restriction, reserve or capital requirement (for which such Issuing Bank is not otherwise compensated hereunder) not in effect on the DIP Closing Date (or, if later, the date it became an Issuing Bank), or shall impose upon such Issuing Bank any unreimbursed loss, cost or expense which was not applicable on the DIP Closing Date (or, if later, the date it became an Issuing Bank) and which such Issuing Bank in good faith deems material to it; or

(ii) the issuance of such Letter of Credit would violate one or more generally applicable policies or procedures of such Issuing Bank.

(m) No Issuing Bank shall be under an obligation to amend any Letter of Credit if (i) such Issuing Bank would have no obligation at such time to issue such Letter of Credit in its amended form under the terms hereof, or (ii) the beneficiary of such Letter of Credit does not accept the proposed amendment to such Letter of Credit.

(n) LC Collateral Account.

(i) The Administrative Agent is hereby authorized to establish and maintain at the Notice Office, in the name of the Administrative Agent and pursuant to a dominion and control agreement, a restricted deposit account designated "The Lead Borrower LC Collateral Account" (or such sub-accounts as the Administrative Agent may require for purposes of administration or collateral separation or otherwise). Each Loan Party shall deposit into the LC Collateral Account from time to time the Cash Collateral required to be deposited under Section 2.13(j) hereof.

(ii) The balance from time to time in such LC Collateral Account shall constitute part of the Collateral and shall not constitute payment of the Obligations until applied as hereinafter provided. Notwithstanding any other provision hereof to the contrary, all amounts held in the LC Collateral Account shall constitute collateral security *first*, for the liabilities in respect of Letters of Credit outstanding from time to time and *second*, for the other Obligations hereunder until such time as all Letters of Credit shall have been terminated and all of the liabilities in respect of Letters of Credit have been paid in full. All funds in "The Lead Borrower LC Collateral Account" may be invested in accordance with the provisions of Section 2.13(j).

Section 2.14 Settlement Amongst Lenders.

(a) The Swingline Lender may, at any time (but in any event shall weekly), on behalf of the Lead Borrower (which hereby authorizes the Swingline Lender to act on its behalf in that regard), request the Administrative Agent to cause the Revolving Lenders under the North American Revolving Facility and/or the Swiss Revolving Facility to make a Revolving Loan (which shall be a Base Rate Loan or an Overnight LIBO Rate Loan, as applicable) in an amount equal to such Revolving Lender's Pro Rata Percentage with respect to the North American Revolving Facility and/or the Swiss Revolving Facility, as applicable, of the Outstanding Amount of Swingline Loans, which request may be made regardless of whether the conditions set forth in Section 6.03 have been satisfied. Upon such request, each such Revolving Lender shall make available to the Administrative Agent the proceeds of such Revolving Loan for the account of the Swingline Lender. If the Swingline Lender requires such a Revolving Loan to be made by such Revolving Lenders and the request therefor is received prior to 12:00 Noon Local Time on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. Local Time that day; and, if the request therefor is received after 12:00 Noon Local Time, then no later than 3:00 p.m. Local Time on the next Business Day. The obligation of each such Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent or the Swingline Lender. If and to the extent any such Revolving Lender shall not have so made its transfer to the Administrative Agent, such Revolving Lender agrees to pay to the Administrative Agent, forthwith on demand, such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

(b) The amount of each Revolving Lender's Pro Rata Percentage of outstanding Revolving Loans (including outstanding Swingline Loans) shall be computed weekly (or more frequently in the Administrative Agent's discretion) and shall be adjusted upward or downward based on all Revolving Loans (including Swingline Loans) and repayments of Revolving Loans (including Swingline Loans) received by the Administrative Agent as of 3:00 p.m. on the first Business Day (such date, the "Settlement Date") following the end of the period specified by the Administrative Agent.

(c) The Administrative Agent shall deliver to each of the Revolving Lenders promptly after a Settlement Date a summary statement of the amount of outstanding Revolving Loans (including Swingline Loans) for the period and the amount of repayments received for the period. As reflected on the summary statement, (i) the Administrative Agent shall transfer to each Revolving Lender its applicable Pro Rata Percentage of applicable repayments, and (ii) each Revolving Lender shall transfer to the Administrative Agent (as provided below) or the Administrative Agent shall transfer to each Revolving Lender, such amounts as are necessary to insure that, after giving effect to all such transfers, the amount of Revolving Loans made by each Revolving Lender under any applicable Facility with respect to Revolving Loans under such Facility to the Borrowers (including Swingline Loans) shall be equal to such Revolving Lender's applicable Pro Rata Percentage under such Facility of Revolving Loans (including Swingline Loans) outstanding as of such Settlement Date. If the summary statement requires transfers to be made to the Administrative Agent by the Revolving Lenders and is received prior to 12:00 Noon on a Business Day, such transfers shall be made in immediately available funds no later than 3:00 p.m. that day; and, if received after 12:00 Noon, then no later than 3:00 p.m. on the next Business Day. The obligation of each Revolving Lender to transfer such funds is irrevocable, unconditional and without recourse to or warranty by the Administrative Agent. If and to the extent any Revolving Lender shall not have so made its transfer to the Administrative Agent, such Revolving Lender agrees to pay to the Administrative Agent, forthwith on demand such amount, together with interest thereon, for each day from such date until the date such amount is paid to the Administrative Agent, at the Federal Funds Rate.

Section 2.15 [reserved].

Section 2.16 Lead Borrower. Each Borrower (to the fullest extent permitted by law) hereby designates the Lead Borrower as its representative and agent for all purposes under the Loan Documents, including requests for Loans and Letters of Credit, designation of interest rates, delivery or receipt of communications, preparation and delivery of Borrowing Base Certificates and financial reports, receipt and payment of Obligations, requests for waivers, amendments or other accommodations, actions under the Loan Documents (including in respect of compliance with covenants), and all other dealings with the Administrative Agent, any Issuing Bank or any Lender, and each Borrower of any Facility (to the fullest extent permitted by law) hereby designates the Lead Borrower as its representative and agent for purposes of requests for Loans and Letters of Credit and designation of interest rates. The Lead Borrower hereby accepts such appointment. The Administrative Agent and the Lenders shall be entitled to rely upon, and shall be fully protected in relying upon, any notice or communication (including any Notice of Borrowing) delivered by the Lead Borrower on behalf of any Borrower, and any Notice of Borrowing, request for a Letter of Credit or designation of interest rate by the Lead Borrower on behalf of the Borrowers of its Facility. The Administrative Agent and the Lenders may give any notice or communication with a Borrower hereunder to the Lead Borrower on behalf of such Borrower. Each of the Administrative Agent, the Issuing Banks and the Lenders shall have the right, in its discretion, to deal exclusively with the Lead Borrower for any or all purposes under the Loan Documents. Each Borrower agrees that any Notice of Borrowing, request for a Letter of Credit, designation of interest rate, notice, election, communication, representation, agreement or undertaking made on its behalf by the Lead Borrower shall be binding upon and enforceable against it.

Section 2.17 [reserved].

Section 2.18 [reserved].

Section 2.19 MIRE Events. Each of the parties hereto acknowledges and agrees that, if there are any Mortgaged Properties, any increase, extension or renewal of any of the Commitments or the Loans or any other incremental or additional credit facilities hereunder, but excluding (i) any continuation or conversion of borrowings, (ii) any Credit Event, or (iii) the issuance, renewal or extension of Letters of Credit shall be subject to and conditioned upon: (1) the prior delivery of all flood hazard determination certifications, acknowledgements and evidence of flood insurance and other flood-related documentation with respect to such Mortgaged Properties as required by the Flood Insurance Laws and as otherwise reasonably required by the Collateral Agent and (2) the Collateral Agent shall have received written confirmation from the Lenders that flood insurance due diligence and flood insurance compliance have been completed by the Lenders (such written confirmation not to be unreasonably conditioned, withheld or delayed).

ARTICLE 3 YIELD PROTECTION, ILLEGALITY AND REPLACEMENT OF LENDERS

Section 3.01 Increased Costs, Illegality, Etc.

(a) (x) If prior to the commencement of any Interest Period for a LIBO Rate Borrowing or a borrowing of Overnight LIBO Loans:

(i) the Administrative Agent determines (which determination shall be conclusive absent demonstrable error) that adequate and reasonable means do not exist for ascertaining the LIBO Rate (including, without limitation, because the LIBO Screen Rate or AUD Screen Rate is not available or published on a current basis), for the applicable currency and such Interest Period;

(ii) the Administrative Agent is advised by the Required Lenders that the LIBO Rate for such Interest Period will not adequately and fairly reflect the cost to such Lenders of making or maintaining their Loans included in such Borrowing for such Interest Period; or

(iii) at any time, if the making or continuance of any LIBO Rate Loan or Overnight LIBO Rate Loan has been made (x) unlawful by any law or governmental rule, regulation or order, (y) impossible by compliance by any Lender in good faith with any governmental request (whether or not having force of law) or (z) impracticable as a result of a contingency occurring after the DIP Closing Date which materially and adversely affects the applicable interbank market,

then the Administrative Agent shall give notice (in reasonable detail) thereof to the Lead Borrower and the Lenders prior to the commencement of such Interest Period by telephone or telecopy as promptly as practicable thereafter and, until the Administrative Agent notifies the Lead Borrower and the Lenders that the circumstances giving rise to such notice no longer exist (which notice the Administrative Agent hereby agrees to provide promptly after its determination of such circumstances ceasing to exist), (A) any Notice of Conversion/Continuation that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a LIBO Rate Borrowing or a borrowing of Overnight LIBO Loans shall be ineffective, (B) if any Notice of Borrowing requests a LIBO Rate Borrowing or a borrowing of Overnight LIBO Loans, such Borrowing shall be made as a Base Rate Borrowing denominated in U.S. Dollars; provided that if the circumstances giving rise to such notice affect only one Type of Borrowings, then the other Type of Borrowings shall be permitted.

(y) Notwithstanding the foregoing, if at any time the Administrative Agent determines (which determination shall be conclusive absent demonstrable error), or the Lead Borrower notifies the Administrative Agent that the Lead Borrower has determined, that (i) the circumstances set forth in clause (a)(x)(i) above have arisen and such circumstances are unlikely to be temporary or (ii) the circumstances set forth in clause (a)(x)(i) above have not arisen but the supervisor for the administrator of the LIBO Screen Rate or the AUD Screen Rate or a Governmental Authority having jurisdiction over the Administrative Agent has made a public statement identifying a specific date after which the LIBO Screen Rate or AUD Screen Rate shall no longer be used for determining interest rates for loans, then the Administrative Agent and the Lead Borrower shall endeavor to establish an alternate rate of interest to the LIBO Rate or AUD Screen Rate that gives due consideration to the then prevailing market convention for determining a rate of interest for syndicated loans in the United States at such time, and shall enter into an amendment to this Agreement to reflect such alternate rate of interest and such other related changes to this Agreement as may be applicable; provided that, if such alternate rate of interest shall be less than 1.00%, such rate shall be deemed to be 1.00% for the purposes of this Agreement. Notwithstanding anything to the contrary in Section 9.07, such amendment shall become effective with respect to each Facility without any further action or consent of any other party to this Agreement so long as the Administrative Agent shall not have received, within five (5) Business Days of the date notice of such alternate rate of interest is provided to the Lenders under such Facility, a written notice from the Required Facility Lenders stating that such Required Facility Lenders object to such amendment and the basis for such objection. Until an alternate rate of interest shall be determined in accordance with this clause (a) (but, in the case of the circumstances described in clause (a)(x)(ii), only to the extent the LIBO Screen Rate or the AUD Screen Rate for the applicable currency and such Interest Period is not available or published at such time on a current basis), (x) any Notice of Conversion/Continuation that requests the conversion of any Revolving Borrowing to, or continuation of any Revolving Borrowing as, a LIBO Rate Borrowing or a borrowing of Overnight LIBO Loans shall be ineffective, (y) if any Notice of Borrowing requests a LIBO Rate Borrowing or a borrowing of Overnight LIBO Loans, such Borrowing shall be made as a Base Rate Borrowing denominated in U.S. Dollars and (z) and each outstanding LIBO Rate Borrowing and each outstanding borrowing of Overnight LIBO Loans shall convert to a Base Rate Borrowing denominated in U.S. Dollars at the end of the Interest Period in which the circumstances described in the first sentence of this clause (a)(y) have occurred.

(b) If any Change in Law shall:

(i) impose, modify or deem applicable any reserve, special deposit, liquidity or similar requirement (including any compulsory loan requirement, insurance charge or other assessment) against assets of, deposits with or for the account of, or credit extended by, any Lender or any Issuing Bank;

(ii) impose on any Lender or any Issuing Bank or the London or Canadian interbank market any other condition, cost or expense (other than Taxes) affecting this Agreement or Loans made by such Lender or such Issuing Bank; or

(iii) subject any Lender, any Issuing Bank or the Administrative Agent to any Taxes (other than (A) Indemnified Taxes and Other Taxes indemnifiable under Section 5.01 or (B) Excluded Taxes) on its loans, loan principal, letters of credit, commitments, or other obligations of the type that such Lender has hereunder, or its deposits, reserves, other liabilities or capital attributable thereto;

and the result of any of the foregoing shall be to increase the cost to such Lender, such Issuing Bank or the Administrative Agent of making, continuing, converting or maintaining any Loan (or of maintaining its obligation to make any such Loan) or issuing or maintaining any Letter of Credit (or of maintaining its obligation to participate in or to issue any Letter of Credit) or to reduce the amount of any sum received or receivable by such Lender, such Issuing Bank or the Administrative Agent hereunder (whether of principal, interest or otherwise), then the Lead Borrower will pay to such Lender, such Issuing Bank or the Administrative Agent, as the case may be, such additional amount or amounts as will compensate such Lender, such Issuing Bank or the Administrative Agent, as the case may be, for such additional costs incurred or reduction suffered as reasonably determined by such Lender, such Issuing Bank or the Administrative Agent (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and consistent with similarly situated customers of the applicable Lender, the applicable Issuing Bank or the Administrative Agent under agreements having provisions similar to this Section 3.01 after consideration of such factors as such Lender, such Issuing Bank or the Administrative Agent then reasonably determines to be relevant).

(c) If any Lender or any Issuing Bank reasonably determines that any Change in Law regarding capital or liquidity requirements has or would have the effect of reducing the rate of return on such Lender's capital or on the capital of such Lender's or such Issuing Bank's holding company, if any, as a consequence of this Agreement or the Loans made by such Lender or such Issuing Bank, to a level below that which such Lender or such Lender's or such Issuing Bank's holding company could have achieved but for such Change in Law (taking into consideration such Lender's policies and the policies of such Lender's or such Issuing Bank's holding company with respect to capital adequacy and liquidity), then from time to time the Lead Borrower will pay to such Lender such additional amount or amounts as will compensate such Lender or such Lender's or such Issuing Bank's holding company for any such reduction suffered as reasonably determined by such Lender, such Issuing Bank or the Administrative Agent (which determination shall be made in good faith (and not on an arbitrary or capricious basis) and consistent with similarly situated customers of the applicable Lender, the applicable Issuing Bank or the Administrative Agent under agreements having provisions similar to this Section 3.01 after consideration of such factors as such Lender, such Issuing Bank or the Administrative Agent then reasonably determines to be relevant).

(d) A certificate of a Lender, an Issuing Bank or the Administrative Agent setting forth in reasonable detail the computation of the amount or amounts necessary to compensate such Lender, such Issuing Bank or the Administrative Agent or its holding company, as the case may be, as specified in clause (b) or (c) of this Section 3.01, and certifying that it is the general practice and policy of such Lender or such

Issuing Bank to demand such compensation from similarly situated borrowers in similar circumstances at such time to the extent it is legally permitted to do so, shall be delivered to the Lead Borrower contemporaneously with any demand for payment and shall be conclusive absent clearly demonstrable error; provided that any such certificate claiming amounts described in clause (x) or (y) of the definition of "Change in Law" shall, in addition, state the basis upon which such amount has been calculated but shall not require any Lender, any Issuing Bank or the Administrative Agent to disclose confidential or price sensitive information. The Lead Borrower shall pay, or cause the applicable Borrower to pay, such Lender, such Issuing Bank or the Administrative Agent, as the case may be, the amount shown as due on any such certificate within 30 days after receipt thereof.

(e) Promptly after any Lender, any Issuing Bank or the Administrative Agent has determined that it will make a request for increased compensation pursuant to this Section 3.01, such Lender shall notify the Lead Borrower thereof. Failure or delay on the part of any Lender, any Issuing Bank or the Administrative Agent to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's, such Issuing Bank's or the Administrative Agent's right to demand such compensation; provided that the Lead Borrower shall not be required to compensate a Lender, an Issuing Bank or the Administrative Agent pursuant to this Section for any increased costs or reductions incurred more than 90 days prior to the date that such Lender, such Issuing Bank or the Administrative Agent, as the case may be, notifies the Lead Borrower of the Change in Law giving rise to such increased costs or reductions and of such Lender's, such Issuing Bank's or the Administrative Agent's claim for compensation therefor; provided further that, if the Change in Law giving rise to such increased costs or reductions is retroactive, then the 90-day period referred to above shall be extended to include the period of retroactive effect thereof.

Section 3.02 Compensation. Each Borrower, jointly and severally, agrees to compensate each Lender, within 30 days of receipt of its written request (which request shall set forth in reasonable detail the basis for requesting such compensation and the calculation of the amount of such compensation), for all losses, expenses and liabilities (including, without limitation, any loss, expense or liability incurred by reason of the liquidation or reemployment of deposits or other funds required by such Lender to fund its LIBO Rate Loans but excluding loss of anticipated profits (and without giving effect to the minimum "LIBO Rate" or similar minimum)) which such Lender may sustain attributable to any of the following events: (i) if for any reason (other than a default by such Lender or the Administrative Agent) a Borrowing of, or conversion from or into, LIBO Rate Loans does not occur on a date specified therefor in a Notice of Borrowing or Notice of Conversion/Continuation; (ii) if any prepayment or repayment (including any termination or reduction of Commitments made pursuant to Section 2.07 or as a result of an acceleration of the Loans pursuant to Section 11.01) or conversion of any of its LIBO Rate Loans occurs on a date which is not the last day of an Interest Period with respect thereto; (iii) if any prepayment of any LIBO Rate Loans is not made on any date specified in a notice of termination or reduction given by the Lead Borrower; or (iv) as a consequence of any other default by any Borrower to repay its LIBO Rate Loans when required by the terms of this Agreement or any Note held by such Lender.

Section 3.03 Change of Lending Office. Each Lender and Issuing Bank agrees that on the occurrence of any event giving rise to the operation of Section 3.01 or Section 5.01(a) with respect to such Lender or Issuing Bank, it will use reasonable efforts to designate a different lending office for any Loans affected by such event or to assign its rights and obligations hereunder to another of its offices, branches or affiliates; provided that such designation (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or Section 5.01(a), as applicable, in the future and (ii) would not subject such Lender or Issuing Bank to any material unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or Issuing Bank. Each Borrower hereby agrees to pay all reasonable and documented costs and expenses incurred by any Lender or Issuing Bank in connection with such designation or assignment. Nothing in this Section 3.03 shall affect or postpone any of the obligations of the Borrowers or the right of any Lender or Issuing Bank provided in Sections 3.01 and 5.01.

Section 3.04 Replacement of Lenders. If (a) any event giving rise to the operation of Section 3.01 or giving rise to the payment by a Loan Party of any Indemnified Taxes, Other Taxes or additional amounts pursuant to Section 5.01 shall occur with respect to any Lender (or any of its Participants), (b) any Lender shall refuse to consent to certain proposed changes, waivers, discharges or terminations with respect to this Agreement which have been approved by the Required Lenders as (and to the extent) provided in Section 13.12(b), (c) any Lender (1) or any direct or indirect parent company thereof has become the subject of a Bail-In Action (or any case or other proceeding in which a Bail-In Action may occur), (2) is an EEA Financial Institution that is rated lower than BBB- by S&P (or an applicable Affiliate thereof) and lower than Baa3 by Moody's (or an applicable Affiliate thereof), (3) is or becomes a Defaulting Lender or a Swiss Non-Qualifying Lender (but only if such status as a Swiss Non-Qualifying Lender causes a breach of any Swiss Non-Bank Rules), (4) rejects the request to designate a currency as an Alternative Currency if such currency has otherwise been approved as an Alternative Currency by the Required Facility Lenders or (5) fails to promptly provide its written confirmation regarding the completion of flood insurance due diligence and flood insurance compliance as contemplated by Section 2.19 if the Required Revolving Lenders have done so, (d) any Lender shall determine that any law, regulation or treaty or directive, or any change therein or in the interpretation or application thereof, shall make it unlawful for such Lender to make or maintain any LIBO Rate Loans as contemplated by this Agreement, (e) [reserved] or (f) any Lender that is the Swingline Lender or an Issuing Bank shall (1) resign in its capacity as such or (2) fail to promptly approve the assignment of a Commitment to a Replacement Lender that the Administrative Agent has approved as contemplated by this Section 3.04, the Lead Borrower shall have the right to replace such Lender (the "Replaced Lender") with one or more other Eligible Transferees, none of whom shall constitute a Defaulting Lender at the time of such replacement (collectively, the "Replacement Lender") and each of whom shall be required to be reasonably acceptable to the Administrative Agent (to the extent the Administrative Agent's consent would be required for an assignment to such Replacement Lender pursuant to Section 13.04) and to the Issuing Banks (to the extent such Issuing Banks' consent would be required for an assignment to such Replacement Letter pursuant to Section 13.04); provided that (i) at the time of any replacement pursuant to this Section 3.04, the Replacement Lender shall enter into one or more Assignment and Assumptions pursuant to Section 13.04(b) (and with all fees payable pursuant to said Section 13.04(b) to be paid by the Replacement Lender and/or the Replaced Lender (as may be agreed to at such time by and among the Lead Borrower, the Replacement Lender and the Replaced Lender)) pursuant to which the Replacement Lender shall acquire all of the Commitments and outstanding Loans of, the Replaced Lender and, in connection therewith, shall pay to (x) the Replaced Lender in respect thereof an amount equal to the sum of (I) an amount equal to the principal of, and all accrued interest on, all outstanding Loans of the respective Replaced Lender and (II) an amount equal to all accrued, but theretofore unpaid, Fees owing to the Replaced Lender pursuant to Section 2.05 and (ii) all obligations of each Borrower due and owing to the Replaced Lender at such time (other than those specifically described in clause (i) above in respect of which the assignment purchase price has been, or is concurrently being, paid) shall be paid in full to such Replaced Lender concurrently with such replacement. Upon receipt by the Replaced Lender of all amounts required to be paid to it pursuant to this Section 3.04, the Administrative Agent shall be entitled (but not obligated) and authorized to execute an Assignment and Assumption on behalf of such Replaced Lender, and any such Assignment and Assumption so executed by the Administrative Agent and the Replacement Lender shall be effective for purposes of this Section 3.04 and Section 13.04. Upon the execution of the respective Assignment and Assumption, the payment of amounts referred to in clauses (i) and (ii) above, recordation of the assignment on the Register pursuant to Section 13.04 and, if so requested by the Replacement Lender, delivery to the Replacement Lender of the appropriate Note or Notes executed by the applicable Borrower, the Replacement Lender shall become a Lender hereunder and the Replaced Lender shall cease to constitute a Lender hereunder, except with respect to indemnification provisions under this Agreement (including, without limitation, Sections 3.01, 3.02, 5.01, 12.07 and 13.01), which shall survive as to such Replaced Lender with respect to actions or occurrences prior to it ceasing to be a Lender hereunder.

If any Lender or Issuing Bank requests compensation under Section 3.01, or if any Loan Party is required to pay any additional amount to any Lender or Issuing Bank or any Governmental Authority for the account of any Lender or Issuing Bank pursuant to Section 5.01(a), then such Lender or Issuing Bank shall use reasonable efforts to designate a different lending office for funding or booking its Loans or Letters of Credit hereunder or to assign its rights and obligations hereunder to another of its offices, branches or affiliates, if, in the judgment of such Lender or Issuing Bank, such designation or assignment (i) would eliminate or reduce amounts payable pursuant to Section 3.01 or 5.01(a), as the case may be, in the future and (ii) would not subject such Lender or Issuing Bank to any unreimbursed cost or expense and would not otherwise be disadvantageous to such Lender or Issuing Bank. The Borrowers hereby agree to pay all reasonable and documented costs and expenses incurred by any Lender in connection with any such designation or assignment.

Notwithstanding any other provision of this Agreement to the contrary, if a Lender (or any direct or indirect parent company thereof) has become the subject of a Bail-In Action (or any case or other proceeding in which a Bail-In Action may occur) (each, a "Bail-In Lender"), then the Lead Borrower may terminate such Bail-In Lender's Commitment hereunder; provided that (A) no Default or Event of Default shall have occurred and be continuing at the time of such Commitment termination, (B) in the case of a Bail-In Lender, the Lead Borrower shall concurrently terminate the Commitment of each other Lender that is a Bail-In Lender at such time, (C) the Administrative Agent and the Required Facility Lenders shall have consented to each such Commitment termination (such consents not to be unreasonably withheld or delayed, but may include consideration of the adequacy of the liquidity of the Lead Borrower and its Subsidiaries) and (D) such Bail-In Lender shall have been paid all amounts then due to it under this Agreement and each other Loan Document (which, for the avoidance of doubt, the respective Borrowers may pay in connection with any such termination without making ratable payments to any other Lender (other than another Lender that has a Commitment that concurrently is being terminated under this Section 3.04)).

Each party hereto agrees that (1) an assignment required pursuant to this Section may be effected pursuant to an Assignment and Assumption executed by the Lead Borrower, the Administrative Agent and the assignee (or, to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and such parties are participants), and (2) the Lender required to make such assignment need not be a party thereto in order for such assignment to be effective and shall be deemed to have consented to and be bound by the terms thereof; provided that, following the effectiveness of any such assignment, the other parties to such assignment agree to execute and deliver such documents necessary to evidence such assignment as reasonably requested by the applicable Lender, provided that any such documents shall be without recourse to or warranty by the parties thereto.

ARTICLE 4 SWISS GUARANTY LIMITATIONS

(a) Any obligation of any Swiss Loan Party under any Loan Document (the "Swiss Guarantor Obligations") shall be subject to the following limitations:

(i) If and to the extent that a Swiss Loan Party becomes liable under this Agreement or any other Loan Documents for obligations other than obligations of one of the relevant Swiss Loan Parties' direct and indirect Subsidiaries (i.e. obligations of its respective direct or indirect parent companies (up-stream liabilities) or sister companies (cross-stream liabilities)) (the "Restricted Obligations") and that performing the relevant Swiss Guarantor Obligation with respect to Restricted Obligations would not be permitted under Swiss corporate law then applicable, then such obligations and payment amount shall from time to time be limited to the amount permitted to be paid under applicable Swiss law; provided that such limited amount shall at no time be less

than the relevant Swiss Loan Party's distributable capital (presently being the balance sheet profits and any reserves available for distribution) at the time or times performance of the relevant Swiss Guarantor Obligation is due or requested from such Swiss Loan Party, and further provided that such limitation (as may apply from time to time or not) shall not (generally or definitively) release the relevant Swiss Loan Party from its Swiss Guarantor Obligations in excess thereof, but merely postpone the payment date therefore until such times as payment is again permitted notwithstanding such limitation.

(ii) In case a Swiss Loan Party who must make a payment in respect of Restricted Obligations under this Agreement is obliged to withhold Swiss Withholding Tax in respect of such payment, such Swiss Loan Party shall:

(1) procure that such payments can be made without deduction of Swiss Withholding Tax, or with deduction of Swiss Withholding Tax at a reduced rate, by discharging the liability to such tax by notification pursuant to applicable law (including double tax treaties) rather than payment of the tax;

(2) if the notification procedure pursuant to sub-paragraph (1) above does not apply, deduct Swiss Withholding Tax at the rate of 35 per cent. (or such other rate as in force from time to time), or if the notification procedure pursuant to sub-paragraph (1) above applies for a part of the Swiss Withholding Tax only, deduct Swiss Withholding Tax at the reduced rate resulting after the discharge of part of such tax by notification under applicable law, from any payment made by it in respect of Restricted Obligations and promptly pay any such taxes to the Swiss Federal Tax Administration (*Eidgenössische Steuerverwaltung*);

(3) notify the Administrative Agent that such notification, or as the case may be, deduction has been made and provide the Administrative Agent with evidence that such a notification of the Swiss Federal Tax Administration has been made or, as the case may be, such taxes deducted have been paid to the Swiss Federal Tax Administration;

(4) in the case of a deduction of Swiss Withholding Tax in respect of which a Secured Party is entitled to a full or partial refund of the Swiss Withholding Tax so deducted,

A. as soon as possible after such deduction (y) request a refund of the Swiss Withholding Tax under applicable law (including tax treaties) and (z) pay to the Administrative Agent upon receipt any amounts so refunded; and

B. if requested by the Administrative Agent, provide the Administrative Agent (on its behalf or on behalf of any Secured Party) those documents that are required by law and applicable tax treaties to be provided by the payer of such tax, for each relevant Secured Party, to prepare a claim for refund of Swiss Withholding Tax.

(iii) If a Swiss Loan Party is obliged to withhold Swiss Withholding Tax in accordance with Article 4 (a)(ii) above, the Administrative Agent shall be entitled to further enforce the Swiss Guarantor Obligation assumed by such Swiss Loan Party and apply proceeds therefrom against the Restricted Obligations up to an amount which is equal to that amount which would have been obtained if no withholding of Swiss Withholding Tax were required, whereby such further enforcements shall always be limited to the maximum amount of the freely distributable reserves

of such Swiss Guarantor as set out in Article 4(a)(i) above. In case the proceeds irrevocably received by the Administrative Agent and the other Secured Parties pursuant to Article 4(a)(ii)(4) (refund) above and this paragraph (additional enforcements) have the effect that the proceeds received by the Administrative Agent and the other Secured Parties exceed the Swiss Guarantor Obligations, then the Agent or the relevant other Secured Party shall return such overcompensation to the relevant Swiss Loan Party.

(b) If and to the extent requested by the Administrative Agent and if and to the extent this is from time to time required under Swiss law (restricting profit distributions), in order to allow the Administrative Agent and the other Secured Parties to obtain a maximum benefit under this Agreement and any other Loan Document, as applicable, the relevant Swiss Loan Party shall, and any parent company of such Swiss Loan Party being a party to this Agreement shall procure that such Swiss Loan Party will, to the extent reasonably practicable and possible, promptly implement all such measures and/or to promptly procure the fulfilment of all prerequisites allowing the prompt fulfilment of the Swiss Guarantor Obligations and allowing the relevant Swiss Loan Party to promptly perform its obligations and make the (requested) payment(s) hereunder from time to time, including the following:

(i) preparation of an up-to-date audited balance sheet of the relevant Swiss Loan Party;

(ii) confirmation of the auditors of the relevant Swiss Loan Party that the relevant amount represents (the maximum of) freely distributable capital of the relevant Swiss Loan Party;

(iii) approval by a shareholders meeting of the relevant Swiss Loan Party of the capital distribution; and

(iv) if the enforcement of Restricted Obligations would be limited due to the effects referred to in this clause, then the relevant Swiss Loan Party shall to the extent permitted by applicable law write up or realize any of its assets that are shown in its balance sheet with a book value that is significantly lower than the market value of the assets, in case of realization, however, only if such assets are not necessary for the relevant Swiss Loan Party's business (*nicht betriebsnotwendig*).

ARTICLE 5 TAXES

Section 5.01 Net Payments.

(a) All payments made by or on behalf of a Loan Party under this Agreement or any other Loan Document shall be made free and clear of, and without deduction or withholding for or on account of, any Taxes; provided that, if a Loan Party, the Administrative Agent or any other applicable withholding agent shall be required by any applicable Requirement of Law to deduct or withhold any Taxes from such payments, then (i) the applicable withholding agent shall be entitled to make such deductions or withholdings as are reasonably determined by the applicable withholding agent to be required by such applicable Requirement of Law, (ii) the applicable withholding agent shall timely pay the full amount deducted or withheld to the relevant Governmental Authority within the time allowed and in accordance with applicable Requirements of Law, and (iii) to the extent withholding or deduction is required to be made on account of Indemnified Taxes or Other Taxes, then an additional amount is payable by the Loan Party as necessary so that after all required deductions and withholdings have been made (including deductions or withholdings applicable to additional sums payable under this Section 5.01) the applicable Recipient receives an amount equal to the sum it would have received had no such deductions or withholdings been made. As soon as reasonably practicable after any payment of Taxes by any Loan Party

or the Administrative Agent to a Governmental Authority as provided in this Section 5.01, the Lead Borrower shall deliver to the Administrative Agent or the Administrative Agent shall deliver to the Lead Borrower, as the case may be, a certified copy of a receipt issued by such Governmental Authority evidencing such payment, a copy of any return required by applicable Requirements of Law to report such payment or other evidence of such payment reasonably satisfactory to the Lead Borrower or the Administrative Agent, as the case may be.

(b) The Loan Parties shall timely pay in accordance with applicable Requirements of Law, or at the option of the Administrative Agent, timely reimburse it for the payment of, any Other Taxes.

(c) The Loan Parties shall indemnify and hold harmless each Recipient within fifteen (15) Business Days after written demand therefor, for the full amount of any Indemnified Taxes or Other Taxes imposed on such Recipient (including Indemnified Taxes or Other Taxes imposed or asserted on or attributable to amounts payable under this Section 5.01), and any reasonable expenses arising therefrom or with respect thereto, whether or not such Indemnified Taxes or Other Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate setting forth in reasonable detail the basis and calculation of the amount of such payment or liability delivered to the Lead Borrower by a Lender or by the Administrative Agent (as applicable) contemporaneously with the demand for payment on its own behalf or on behalf of a Lender shall be conclusive absent demonstrable error.

(d) The Lead Borrower shall promptly upon becoming aware that a Loan Party must make any deduction or withholding in respect of Taxes (or that there is any change in the rate or the basis of any deduction or withholding in respect of Taxes) notify the Administrative Agent accordingly.

(e) Any Lender that is entitled to an exemption from or reduction of withholding Tax with respect to payments under this Agreement or any other Loan Document shall deliver to the Lead Borrower and the Administrative Agent, at the time(s) and in the manner(s) reasonably requested by the Lead Borrower and/or the Administrative Agent and within a reasonable time period, such information and/or properly completed and executed documentation reasonably requested by the Lead Borrower and/or Administrative Agent as may permit such payments to be made without withholding or at a reduced rate of withholding. In addition, any Lender, if reasonably requested by the Lead Borrower and/or the Administrative Agent, shall deliver such other documentation prescribed by Requirements of Law or reasonably requested by the Lead Borrower and/or the Administrative Agent as will enable the Lead Borrower or the Administrative Agent to determine whether or not such Lender is subject to backup withholding or information reporting requirements. Notwithstanding anything to the contrary in this Section 5.01(e), the completion, execution and submission of such documentation (other than such documentation set forth in Section 5.01(e)(i), (ii) or (iv) below) shall not be required if in the Lender's reasonable judgment such completion, execution or submission would subject such Lender to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender.

Without limiting the foregoing, with respect to any Loan or Commitment to a U.S. Borrower:

(i) Each Lender under the North American Revolving Facility or DIP Term Facility that is a U.S. Lender shall deliver to the Lead Borrower and the Administrative Agent on or prior to the date on which such Lender becomes a Lender under the North American Revolving Facility or DIP Term Facility (and from time to time upon the reasonable request of the Lead Borrower or the Administrative Agent) two properly completed and duly executed copies of IRS Form W-9 (or any successor form) certifying that such Lender is exempt from United States backup withholding Tax.

(ii) Each Non-U.S. Lender under the North American Revolving Facility or DIP Term Facility shall, to the extent it is legally eligible to do so, deliver to the Lead Borrower and the Administrative Agent on or prior to the date on which such Non-U.S. Lender becomes a party to this Agreement (and from time to time thereafter upon the reasonable request of the Lead Borrower or the Administrative Agent), two properly completed and duly executed copies of whichever of the following is applicable:

(1) in the case of a Non-U.S. Lender claiming the benefits of an income tax treaty to which the United States is a party, (x) with respect to payments of interest under any Loan Document, an executed copy of IRS Form W-8BEN-E or IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "interest" article of such tax treaty, and (y) with respect to any other applicable payments under any Loan Document, IRS Form W-8BEN-E or IRS Form W-8BEN establishing an exemption from, or reduction of, U.S. federal withholding Tax pursuant to the "business profits" or "other income" article of such tax treaty;

(2) in the case of a Non-U.S. Lender claiming that its extension of credit will generate U.S. effectively connected income, an executed IRS Form W-8ECI;

(3) in the case of a Non-U.S. Lender claiming the benefits of the exemption for portfolio interest under Section 881(c) of the Code, (x) a certificate substantially in the form of Exhibit C-1 to the effect that such Non-U.S. Lender is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code, a "10-percent shareholder" of the Lead Borrower within the meaning of Section 881(c)(3)(B) of the Code, or a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and that no payment made in connection with any Loan Document is effectively connected with the conduct of a U.S. trade or business by such Non-U.S. Lender (a "U.S. Tax Compliance Certificate") and (y) IRS Form W-8BEN or IRS Form W-8BEN-E, as applicable;

(4) to the extent a Non-U.S. Lender is not the beneficial owner of such payments, IRS Form W-8IMY, accompanied by IRS Form W-8ECI, IRS Form W-8BEN or IRS Form W-8BEN-E, whichever is applicable, a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-3 or Exhibit C-4, IRS Form W-9, and/or other certification documents from each beneficial owner, as applicable; provided that, if the Non-U.S. Lender is a partnership and one or more direct or indirect partners of such Non-U.S. Lender are claiming the portfolio interest exemption, such Non-U.S. Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit C-2 on behalf of each such direct and indirect partner(s); or

(5) for purposes of furnishing the U.S. Tax Compliance Certificate as described in the foregoing clauses (3) and (4), if a Non-U.S. Lender (or a foreign Participant) is a Disregarded Entity, the Non-U.S. Lender shall submit such certificate based on the status of the Person that is treated for U.S. federal income tax purposes as being the sole owner of such Lender or Participant.

(iii) Any Non-U.S. Lender under the North American Revolving Facility or DIP Term Facility shall, to the extent it is legally eligible to do so, deliver to the Lead Borrower and the Administrative Agent (in such number of copies as shall be requested by the recipient) on or about the date on which such Non-U.S. Lender becomes a Lender under the North American Revolving Facility or DIP Term Facility (and from time to time thereafter upon the reasonable request of the Lead Borrower and/or the Administrative Agent), executed copies of any other form prescribed by

Requirements of Law as a basis for claiming exemption from or a reduction in U.S. federal withholding Tax, duly completed, together with such supplementary documentation as may be prescribed by Requirements of Law to permit the Lead Borrower or the Administrative Agent to determine the withholding or deduction required to be made, if any.

(iv) If a payment made to any Lender under this Agreement or any other Loan Document would be subject to U.S. federal withholding Tax imposed by FATCA if such Lender were to fail to comply with the applicable reporting requirements of FATCA (including those contained in Section 1471(b) or 1472(b) of the Code, as applicable), such Lender shall deliver to the Lead Borrower and the Administrative Agent at the time or times prescribed by Requirements of Law and at such time or times reasonably requested by the Lead Borrower and/or the Administrative Agent such documentation prescribed by applicable Requirements of Law (including as prescribed by Section 1471(b)(3)(C)(i) of the Code) and such additional documentation reasonably requested by the Lead Borrower and/or the Administrative Agent as may be necessary for the Lead Borrower and the Administrative Agent to comply with their obligations under FATCA, to determine whether such Lender has complied with such Lender's obligations under FATCA or to determine the amount, if any, to deduct and withhold from such payment. Solely for purposes of this Section 5.01(e)(iv), "FATCA" shall include any amendments made to FATCA after the date of this Agreement.

(v) Each Lender (A) shall promptly notify the Lead Borrower and the Administrative Agent of any change in circumstance which would modify or render invalid any claimed exemption or reduction, and (B) if any documentation it previously delivered pursuant to this Section 5.01(e) expires or becomes inaccurate in any respect, shall promptly (x) update such documentation or (y) notify the Lead Borrower and the Administrative Agent in writing of its legal ineligibility to do so.

(vi) Each Lender hereby authorizes the Administrative Agent to deliver to the Loan Parties and to any successor Administrative Agent any documentation provided by such Lender to the Administrative Agent pursuant to this Section 5.01(e).

(f) If any Lender or the Administrative Agent, as applicable, determines reasonably and in good faith that it has received a refund or repayment (including by way of reduction or offset of Taxes due) of an Indemnified Tax or Other Tax (each, a "Refund") for which it has been indemnified by a Loan Party or with respect to which a Loan Party has paid additional amounts pursuant to this Section 5.01, then the Lender or the Administrative Agent, as the case may be, shall reimburse the Loan Party for such amount (net of all reasonable out-of-pocket expenses (including Taxes) of such Lender or the Administrative Agent, as the case may be, and without interest other than any interest received thereon from the relevant Governmental Authority with respect to such Refund) as the Lender or the Administrative Agent, as the case may be, determines in good faith to be the portion of the Refund as will leave it, after such reimbursement, in no better or worse position (taking into account expenses (including Taxes) imposed on the Refund) than it would have been in if the Indemnified Tax or Other Tax giving rise to such Refund had not been imposed in the first instance and no amounts had been paid in respect thereof pursuant to this Section 5.01; provided that the Loan Party, upon the request of the Lender or the Administrative Agent, agrees to repay the amount paid over to the Loan Party (*plus* any penalties, interest (solely with respect to the time period after such funds were paid over to any Loan Party pursuant to this Section 5.01(f), except to the extent that the refund was initially claimed at the written request of such Loan Party) or other charges imposed by the relevant Governmental Authority) to the Lender or the Administrative Agent in the event the Lender or the Administrative Agent is required to repay such Refund to such Governmental Authority. In such event, such Lender or the Administrative Agent, as the case may be, shall, at the Lead Borrower's request, provide the Lead Borrower with a copy of any notice of assessment or other evidence of the requirement to repay such Refund received from the relevant Governmental Authority (provided that such

Lender or the Administrative Agent may delete any information therein that it deems confidential). No Lender nor the Administrative Agent shall be obliged to make available its Tax returns (or any other information relating to its Taxes that it deems confidential) to any Loan Party in connection with this clause (f) or any other provision of this Section 5.01.

(g) VAT.

(i) All amounts expressed to be payable under a Loan Document by any party to the Administrative Agent or any Lender (for the purposes of this Section 5.01, each, a "Finance Party") which (in whole or in part) constitute the consideration for any supply for VAT purposes are deemed to be exclusive of any VAT which is chargeable on that supply, and accordingly, subject to paragraph (ii) below, if VAT is or becomes chargeable on any supply made by any Finance Party to any party under a Loan Document and such Finance Party is required to account to the relevant tax authority for the VAT, that party must pay to such Finance Party (in addition to and at the same time as paying the consideration for such supply) an amount equal to the amount of that VAT (and such Finance Party must promptly provide an appropriate VAT invoice to that party).

(ii) If VAT is or becomes chargeable on any supply made by any Finance Party (the "Supplier") to any other Finance Party (the "Recipient") under a Loan Document, and any party other than the Recipient (the "Relevant Party") is required by the terms of any Loan Document to pay an amount equal to the consideration for that supply to the Supplier (rather than being required to reimburse or indemnify the Recipient in respect of that consideration):

(1) (where the Supplier is the person required to account to the relevant tax authority for the VAT) the Relevant Party must also pay to the Supplier (at the same time as paying that amount) an additional amount equal to the amount of the VAT. The Recipient must (where this Section 5.01(g)(ii)(1) applies) promptly pay to the Relevant Party an amount equal to any credit or repayment the Recipient receives from the relevant tax authority which the Recipient reasonably determines relates to the VAT payable on that supply; and

(2) (where the Recipient is the person required to account to the relevant tax authority for the VAT) the Relevant Party must promptly, following demand from the Recipient, pay to the Recipient an amount equal to the VAT chargeable on that supply but only to the extent that the Recipient reasonably determines that it is not entitled to credit or repayment from the relevant tax authority in respect of that VAT.

(iii) Where a Loan Document requires any party to reimburse or indemnify a Finance Party for any cost or expense, that party shall reimburse and indemnify (as the case may be) such Finance Party for the full amount of such cost or expense, including such part thereof as represents VAT, save to the extent that such Finance Party reasonably determines that it is entitled to credit or repayment in respect of such VAT from the relevant tax authority.

(iv) Any reference in this Section 5.01(g) to any party shall, at any time when such party is treated as a member of a group or fiscal unity for VAT purposes, include (where appropriate and unless the context otherwise requires) a reference to the person who is treated at that time as making the supply, or (as appropriate) receiving the supply, under the grouping or fiscal unity rules, respectively, provided for in article 11 of the Council Directive 2006/112/EC as amended (or as implemented by the relevant member state of the European Union), or any other similar provision in any jurisdiction so that a reference to a party shall be construed as a reference to that party of the relevant group or fiscal unity of which that party is a member for VAT purposes at the relevant

time or the relevant representative member (or representative or head) of that group or fiscal unity at that time (as the case may be).

(v) In relation to any supply made by a Finance Party to any party under a Loan Document, if reasonably requested by such Finance Party, that party must promptly provide such Finance Party with details of that party's VAT registration and such other information as is reasonably requested in connection with such Finance Party's VAT reporting requirements in relation to such supply.

(h) The agreements in this Section 5.01 shall survive the resignation or replacement of the Administrative Agent, the termination of this Agreement and the repayment, satisfaction or discharge of the Loans and all other obligations and amounts payable under any Loan Document.

(i) For purposes of this Section 5.01, the term "Lender" shall include any Issuing Bank and the Swingline Lender and the term "Loan Document" shall include any Letter of Credit.

(j) Notwithstanding any provision of this Agreement to the contrary (including Section 2.06(g) and this Section 5.01), a Swiss Loan Party shall not be required to make a tax gross up, a tax indemnity payment or an increased interest payment under any Loan Document to a specific Lender or Participant (but, for the avoidance of doubt, shall remain required to make a tax gross up, a tax indemnity payment, or an increased interest payment to all other Lenders) in respect of Swiss Withholding Tax due on interest payments by a Swiss Loan Party under this Agreement as a direct result of such Lender or Participant (i) making an incorrect declaration of its status as to whether or not it is a Swiss Qualifying Lender or a single Swiss Non-Qualifying Lender, (ii) breaching the restrictions regarding transfers, assignments, participations, sub-participation and exposure transfers set forth in Section 13.04 or (iii) ceasing to be a Swiss Qualifying Lender other than as a result of any change after the date it became a Lender or Participant under this Agreement in (or in the interpretation, administration or application of) any law or double taxation treaty, or any published practice or published concession of any relevant taxing authority (and it being understood that a Swiss Loan Party shall not be required to make a tax indemnity payment or increased interest payment under any Loan Document to a specific Lender or Participant to the extent a loss, liability or cost is compensated for by an increased payment under Section 2.06(g) or would have been compensated for by an increased payment under Section 2.06(g) but was not so compensated solely because one of the exclusions in Section 2.06(g) or in this clause (j) applied).

ARTICLE 6 CONDITIONS PRECEDENT

Section 6.01 Conditions Precedent to Credit Events on the DIP Closing Date. The Administrative Agent, the Swingline Lender, the Issuing Banks and the Lenders shall not be required to fund any Revolving Loans or Swingline Loans, or arrange for the issuance of any Letters of Credit on the DIP Closing Date, until the following conditions are satisfied or waived.

(a) Loan Documents. The Administrative Agent shall have received this Agreement and each other Loan Document to be delivered on the DIP Closing Date, in each case duly executed and delivered by each party thereto (which, subject to Section 13.09(b), may include any Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page).

(b) Notes. The Administrative Agent shall have received a Note duly executed by a Responsible Officer of each of the Borrowers in favor of each Lender requesting a Note at least three (3) Business Days prior to the DIP Closing Date.

(c) Representations and Warranties. The representations and warranties set forth in (i) Article 8 of this Agreement or (ii) any other Loan Document in effect on the DIP Closing Date shall be true and correct in all material respects on and as of the DIP Closing Date (after giving effect to the Transactions); provided that any representation and warranty that is qualified as to "materiality," "Material Adverse Effect" or similar language shall be true and correct (after giving effect to any qualification therein) in all respects on such respective dates.

(d) No Default or Event of Default. No Default or Event of Default shall have occurred or be continuing, or would result from the consummation of the Transactions, on the DIP Closing Date.

(e) Organizational Documents. The Administrative Agent shall have received a certificate (or certificates) of the Secretary or Assistant Secretary, statutory director, management board members or similar officer of each Loan Party dated the DIP Closing Date and certifying, to the extent applicable:

(i) (A) in the case of any Loan Party (other than a Swiss Loan Party), that attached thereto is a true and complete copy of the certificate or articles of incorporation, any certificates of incorporation on change of name, certificates of incorporation on re-registration as a public limited company, certificate of limited partnership, certificate of formation or other equivalent constituent or constitutional and governing documents, including all amendments thereto, of such Loan Party certified as of a recent date by the applicable Secretary of State (or other similar official or Governmental Authority) of the jurisdiction of its organization or incorporation or by the Secretary or Assistant Secretary, statutory director, management board members or similar officer of such Loan Party or other person duly authorized by the constituent or constitutional documents of such Loan Party and (B) in the case of a Swiss Loan Party, that attached thereto is a true and complete copy of a an excerpt from the commercial register certified as of a recent date by the competent commercial register officer;

(ii) that in the case of each U.S. Loan Party, attached thereto is a true and complete copy of a certificate as to the good standing (or similar certification) of such U.S. Loan Party (to the extent that such concept exists in such jurisdiction), as of a recent date from the applicable Secretary of State (or other similar official or Governmental Authority);

(iii) that attached thereto is a true and complete copy of the by-laws (or articles of association, articles of incorporation, partnership agreement, limited liability company agreement or other equivalent constituent or constitutional and governing documents, if any) of such Loan Party as in effect on the DIP Closing Date and at all times since a date prior to the date of the resolutions described in the following clause (iv);

(iv) that attached thereto is a true and complete copy of resolutions or meeting minutes (or certificates thereof) duly adopted by the Board of Directors (or equivalent governing body) of such Loan Party (or its managing general partner or managing member) authorizing the execution, delivery and performance of each of the Loan Documents to which such person is a party on the DIP Closing Date and that such resolutions or meeting minutes have not been modified, rescinded or amended and are in full force and effect on the DIP Closing Date;

(v) to the extent not covered in clauses (i)-(iv) above, that attached thereto is a true and complete copy of any powers-of-attorney granted by such Loan Party to the individuals executing each of the Loan Documents to which such person is a party on the DIP Closing Date and that such powers-of-attorney have not been limited, revoked or amended and are in full force and effect on the DIP Closing Date;

(vi) that attached thereto is a true and complete copy of resolutions or meeting minutes (or certificates thereof) duly adopted by all the holders of the issued shares in each Loan Party or, as applicable, its general partner or its general partner's shareholders (if such resolutions are necessary under the relevant local laws), approving the terms of, and the transactions contemplated by, the Loan Documents to which the Loan Party is a party (including the commencement of the Chapter 11 Cases);

(vii) that (if applicable and not already included in the resolutions referred to in clause (iv) above) attached thereto is a true and complete copy of, a copy of any power of attorney authorizing the person(s) specified therein to sign the Loan Documents to which the Loan Party is a party on behalf of each of the Loan Party;

(viii) as to the incumbency and specimen signature of each officer or authorized signatory executing this Agreement or any other Loan Document delivered in connection herewith on the DIP Closing Date on behalf of such Loan Party; and

(ix) confirming that (a) borrowing or guaranteeing or securing, as appropriate, the entry into the Loan Documents and the performance of its obligations thereunder would not cause any borrowing, guarantee, security or similar limit binding on any Loan Party to be exceeded and (b) each copy document relating to it specified in this Section 6.01 is correct, complete and in full force and effect as at a date no earlier than the date of this Agreement.

(f) Australian Deliverables. The Administrative Agent shall have received (i) the Initial Australian Security Documents (with respect to clause (d) thereof, to the extent not previously delivered to JPMCB in its capacity as Prepetition Agent) and the Australian Security Trust Deed duly authorized, executed and delivered by each Australian Loan Party and any other Loan Party party to those documents, (ii) a verification certificate for each Australian Loan Party signed by two directors or a director and company secretary attaching the following documents for that Australian Loan Party (A) its constitution (or confirmation that there have no changes to its constitution since it was last provided to JPMCB in its capacity as the Prepetition Agent), (B) extracts of board resolutions approving its entry into the Loan Documents to which it is a party and (C) any powers of attorney under which it signs any Loan Documents, (iii) satisfactory ASIC company searches, insolvency searches and searches of the Australian PPS register, (iv) the original share certificates and an executed blank share transfer form with respect to all the shares of the Australian Loan Parties (to the extent that they have not already been provided to JPMCB in its capacity as the Prepetition Agent) and (v) all information and documentation required by the Australian Security Trustee to register the Australian Security Trustee's Lien over the Victa trademarks held by Victa Limited with IP Australia.

(g) Legal Opinion. The Administrative Agent shall have received, on behalf of itself and the Lenders, the favorable written opinions of (i) Foley & Lardner LLP, as special New York counsel for the Loan Parties, (ii) Norton Rose Fulbright Australia, as Australian legal counsel for the Administrative Agent, (iii) Norton Rose Fulbright LLP, as special Dutch counsel to the Administrative Agent, (iv) Norton Rose Fulbright LLP, as special English counsel to the Administrative Agent and (v) Walder Wyss Ltd., as special Swiss counsel to the Administrative Agent (or, in each case, such other counsel as may be reasonably acceptable to the Administrative Agent) (A) dated the DIP Closing Date, (B) addressed to the Administrative Agent and the Lenders on the DIP Closing Date and (C) in form and substance reasonably satisfactory to the Administrative Agent covering customary matters relating to the Loan Documents.

(h) [reserved].

(i) Collateral and Guarantee Requirement. To the extent required to be satisfied on the DIP Closing Date, the Collateral and Guarantee Requirement shall be satisfied (or waived in accordance with Section 13.12) on and as of the DIP Closing Date.

(j) [reserved].

(k) Officer's Certificate. The Administrative Agent shall have received a certificate of a Responsible Officer of the Lead Borrower certifying compliance with the conditions in Section 6.01(c) and (d) above and Section 6.01(t) below.

(l) [reserved].

(m) Lien Searches. The Administrative Agent shall have received lien search results as to Foreign Loan Parties as reasonably required by the Administrative Agent.

(n) Fees and Expenses. The Agents shall have received all fees due and payable thereto or to any Lender on or prior to the DIP Closing Date and, to the extent invoiced at least one (1) Business Day prior to the DIP Closing Date, reimbursement or payment of all reasonable and documented out-of-pocket expenses (including reasonable and documented fees, charges and disbursements of counsels to the Administrative Agent and the Prepetition Agent) required to be reimbursed or paid by the Loan Parties hereunder, under this Agreement or the Prepetition Credit Agreement, as applicable, on or prior to the DIP Closing Date.

(o) Appraisal/Borrowing Base Certificate. The Lead Borrower shall have delivered to the Administrative Agent a Borrowing Base Certificate in form and substance reasonably satisfactory to the Administrative Agent; provided that the Borrowing Base Certificate shall evidence Aggregate Availability of at least $22,500,000 after giving effect to the Borrowings to be made on the DIP Closing Date.

(p) Lender Loss Sharing Agreement. The Administrative Agent shall have received a counterpart to the Lender Loss Sharing Agreement from each Revolving Lender and each Issuing Bank.

(q) Chapter 11 Cases. The Chapter 11 Cases shall have been commenced by the Debtors, and the Administrative Agent shall be reasonably satisfied with (x) the form and substance of the First Day Orders sought by the Debtors and entered on or promptly following the DIP Closing Date (including a cash management order) and (y) the motions to approve the Facilities and First Day Orders.

(r) Interim Orders. The Administrative Agent shall have received a signed copy of an order entered by the Bankruptcy Court no later than five (5) days after the Petition Date in substantially the form of Exhibit L, which shall be satisfactory in form and substance to the Administrative Agent (the "Interim Order") and confirmation that the Interim Order has been entered on the docket, which Interim Order shall, among other things, (i) approve the Loan Documents and grant the Obligations of the Debtors hereunder Superpriority Claim status and the Liens described in Section 9.25, (ii) authorize extensions of credit (including the deemed issuance of the Existing Letters of Credit) under the North American Revolving Facility, (iii) be in full force and effect; and (iv) not have been vacated, reversed, modified, amended or stayed; and the Debtors are in compliance with the terms and conditions of the Interim Order.

(s) Projections. The Administrative Agent shall have received and be reasonably satisfied with the Initial Approved DIP Budget (as defined in the Interim Order).

(t) Absence of Litigation. There shall not exist any action, suit, investigation, litigation or proceeding pending or (to the knowledge of the Loan Parties) threatened in writing in any court or before

any arbitrator or governmental instrumentality (other than the Chapter 11 Cases and any action, suit, investigation or proceeding arising from the commencement and continuation of the Chapter 11 Cases or the consequences that would normally result from the commencement and continuation of the Chapter 11 Cases) that is not stayed or could reasonably be expected to result in a Material Adverse Effect.

(u) Stalking Horse Bid. The Administrative Agent shall have received a purchase agreement (a "Stalking Horse APA"), duly executed by the applicable Loan Parties and the Stalking Horse Bidder, providing for the sale and purchase of substantially all of the Debtors' assets (including, without limitation, the Equity Interests of one or more of the Debtors' direct or indirect subsidiaries and/or certain joint venture equity interests held by the Debtors), which purchase agreement shall be in form and substance reasonably acceptable to the Administrative Agent and the Required Lenders (provided that, upon the execution and delivery by each Lender of its signature page to this Agreement, such Lender shall be deemed to have determined that such purchase agreement is in form and substance reasonably acceptable to it).

Section 6.02 Conditions Precedent to Credit Events on the DIP Term Loan Closing Date. The obligation of each DIP Term Lender to make any Credit Extension (other than the Interim DIP Term Loans) shall be subject to the satisfaction (or waiver) of each of the conditions precedent set forth below:

(a) Prepetition Obligations Refinancing. On the DIP Term Loan Closing Date, prior to or substantially simultaneously with the Borrowing of the DIP Term Loans on the DIP Term Loan Closing Date, the Loan Parties shall have repaid in full in cash all then outstanding Prepetition Obligations and all Commitments (as defined in the Prepetition Credit Agreement) shall have been terminated, in each case, using the proceeds of the DIP Term Loans on the DIP Term Loan Closing Date (the "Prepetition Obligations Refinancing").

(b) Prepetition Obligation Payoff Letters. On or prior to the DIP Term Loan Closing Date, the Loan Parties shall have received the Prepetition Obligation Payoff Letter.

(c) Final Order. The Administrative Agent shall have received a signed copy of the Final Order entered by the Bankruptcy Court no later than the Final Order Deadline and confirmation that the Final Order has been entered on the docket, which Final Order shall be in full force and effect and shall not have been vacated, reversed, modified, amended or stayed.

(d) DIP Term Commitment Termination Date. The DIP Term Commitment Termination Date shall not have occurred.

(e) Closing Fee. The DIP Term Lenders shall be deemed to have received for the account of the DIP Term Lenders, the closing fee set forth in Section 2.05(d) of this Agreement, which amount shall be net funded from the proceeds of the DIP Term Loans.

Section 6.03 Conditions Precedent to All Credit Events. The obligation of each Lender and each Issuing Bank to make any Credit Extension (excluding Section 6.03(b) and (e) with respect to the funding of any DIP Term Loans) shall be subject to the satisfaction (or waiver) of each of the conditions precedent set forth below:

(a) Notice of Borrowing. The Administrative Agent shall have received a Notice of Borrowing as required by Section 2.03 (or such notice shall have been deemed given in accordance with Section 2.03) if Loans are being requested or, in the case of the issuance, amendment, extension or renewal of a Letter of Credit, the applicable Issuing Bank and the Administrative Agent shall have received a notice requesting the issuance, amendment, extension or renewal of such Letter of Credit as required by

Section 2.13(b) or, in the case of the Borrowing of a Swingline Loan, the Swingline Lender and the Administrative Agent shall have received a notice requesting such Swingline Loan as required by Section 2.12(b).

(b) Availability. At the time of and immediately upon giving effect to such Credit Extension, the Availability Conditions shall be satisfied.

(c) No Default. No Default or Event of Default shall exist at the time of, or result from, such Credit Extension and such Credit Extension shall not violate any requirement of law and shall not have been, temporarily, preliminarily or permanently enjoined.

(d) Representations and Warranties. Each of the representations and warranties made by any Loan Party set forth in Article 8 hereof shall be true and correct in all material respects (without duplication of any materiality standard set forth in any such representation or warranty) on and as of the date of such Credit Extension with the same effect as though made on and as of such date, except to the extent such representations and warranties expressly relate to an earlier date, in which case such representations and warranties shall be true and correct in all material respects as of such date (without duplication of any materiality standard set forth in any such representation or warranty).

(e) Consolidated Cash Balance. The Consolidated Cash Balance on and as of the date of such Credit Extension does not exceed $7,500,000, before and immediately after giving effect to such Credit Extension and to the application of the proceeds therefrom (as such use of proceeds is certified to by the applicable Borrower in the applicable Notice of Borrowing) on or around such date, but in any event, not to exceed two Business Days after such date.

(f) DIP Orders. (i) The Interim Order or the Final Order, as applicable, shall be in full force and effect, and the Interim Order or Final Order, as applicable, shall not have been vacated or reversed, shall not be subject to a stay, and shall not have been modified or amended without the written consent of the Administrative Agent and the Required Lenders at the time of such Borrowing or issuance of Letter of Credit; and (ii) all First Day Orders (including as entered on a final basis) shall be in form reasonably satisfactory to the Administrative Agent.

(g) No Outstanding Prepetition Obligations. In respect of any Credit Extensions to be made on and after the DIP Term Loan Closing Date, there will no outstanding Prepetition Obligations under the Prepetition Credit Agreement other than Reinstated Prepetition Obligations, if any.

The acceptance of the benefits of each Credit Event after the DIP Closing Date shall constitute a representation and warranty by each Borrower to the Administrative Agent and each of the Lenders that all the conditions specified in this Section 6.03 and applicable to such Credit Event are satisfied as of that time (other than such conditions which are subject to the discretion of the Administrative Agent or the Lenders).

All of the Notes, certificates, legal opinions and other documents and papers referred to in Article 6, unless otherwise specified, shall be delivered to the Administrative Agent at the Notice Office for the account of each of the Lenders.

ARTICLE 7 [RESERVED]

ARTICLE 8 REPRESENTATIONS, WARRANTIES AND AGREEMENTS

On the DIP Closing Date and the date of each Credit Extension, to the extent provided in Section 6.03, the Borrowers represent and warrant to the Lenders, the Swingline Lender and the Issuing Banks that:

Section 8.01 Organization; Powers . The Lead Borrower and each of the Subsidiaries which is a Loan Party or a Material Subsidiary (a) is a partnership, limited liability company, unlimited liability company, public limited company, private company limited by shares, corporation or other entity duly organized/incorporated, validly existing and in good standing under the laws of the jurisdiction of its organization/incorporation (to the extent that each such concept exists in such jurisdiction), (b) has all requisite power and authority to own its property and assets and to carry on its business as now conducted, (c) is qualified to do business in each jurisdiction where such qualification is required, except in the case of clause (a) (other than with respect to the Lead Borrower and the other Borrowers), clause (b) (other than with respect to the Lead Borrower and the other Borrowers), and clause (c), where the failure so to be or have, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, and (d) subject (with respect to the Debtors only) to the entry by the Bankruptcy Court of the Interim Order and, after entry thereof, the Final Order and to the terms thereof, has the power and authority to execute, deliver and perform its obligations under each of the Loan Documents and each other agreement or instrument contemplated thereby to which it is or will be a party and, in the case of the Borrowers, to borrow and otherwise obtain credit hereunder.

Section 8.02 Authorization. The execution, delivery and performance by each of the Loan Parties of each of the Loan Documents to which it is a party and the borrowings and other extensions of credit hereunder (a) subject (with respect to the Debtors only) to the entry by the Bankruptcy Court of the Interim Order and, after entry thereof, the Final Order and to the terms thereof, have been duly authorized by all corporate, stockholder, shareholder, partnership, limited liability company or other organizational action required to be obtained by such Loan Parties and (b) will not (i) violate (A) any provision of law, statute, rule or regulation applicable to any Loan Party, (B) the certificate or articles of incorporation or other constitutional documents (including any partnership, limited liability company or operating agreements) or by-laws or articles of association of any Loan Party, (C) any applicable order of any court or any law, rule, regulation or order of any Governmental Authority applicable to any Loan Party or (D) any provision of any indenture, certificate of designation for preferred stock, agreement or other instrument to which the any Loan Party is a party or by which any of them or any of their property is or may be bound (except, in the case of the Debtors only, those entered into prior to the DIP Closing Date), (ii) result in a breach of or constitute (alone or with due notice or lapse of time or both) a default under, give rise to a right of or result in any cancellation or acceleration of any right or obligation (including any payment) under any such indenture, certificate of designation for preferred stock, agreement or other instrument, where any such conflict, violation, breach or default referred to in clause (i) or (ii) of this Section 8.02(b), would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect, or (iii) result in the creation or imposition of any Lien upon or with respect to any property or assets now owned or hereafter acquired by any Loan Party, other than the Liens created by the Loan Documents and Permitted Liens.

Section 8.03 Enforceability. This Agreement has been duly executed and delivered by the Borrowers and constitutes, and each other Loan Document when executed and delivered by each Loan Party that is party thereto will constitute, a legal, valid and binding obligation of such Loan Party enforceable against each such Loan Party in accordance with its terms, subject to (a) the effects of bankruptcy, insolvency, moratorium, reorganization, administration, examinership, fraudulent conveyance

or other similar laws affecting creditors' rights generally, including in the case of the Debtors only the entry by the Bankruptcy Court of the Interim Order and the Final Order and to the terms thereof, (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law), (c) implied covenants of good faith and fair dealing, and (d) the need for filings and registrations necessary to perfect the Liens on the Collateral granted by the Loan Parties in favor of the Collateral Agent.

Section 8.04 Governmental Approvals. No action, consent or approval of, registration or filing with or any other action by any Governmental Authority is or will be required for the execution, delivery or performance of each Loan Document to which the Borrowers or any Guarantor is a party, except for (a) the filing of Uniform Commercial Code, Australian PPSA and Canadian PPSA financing statements, (b) filings with the United States Patent and Trademark Office and the United States Copyright Office and comparable offices in foreign jurisdictions and equivalent filings in foreign jurisdictions, (c) such as have been made or obtained and are in full force and effect, (d) such actions, consents and approvals the failure of which to be obtained or made would not reasonably be expected to have a Material Adverse Effect, (e) in the case of the Debtors only, applicable approvals by the Bankruptcy Court, and (f) filings or other actions listed on Schedule 8.04, recordation of the Mortgages and any other filings or registrations required to perfect Liens created by the Security Documents.

Section 8.05 Financial Statements. The Lead Borrower has heretofore furnished to the Lenders the audited consolidated balance sheets as of June 30, 2019, July 1, 2018 and July 2, 2017 and the related statements of income, stockholders' or shareholders' equity, and cash flow for the Lead Borrower and its consolidated subsidiaries for the fiscal years ended on June 30, 2019, July 1, 2018 and July 2, 2017, in each case, including the notes thereto (collectively, the "Historical Financial Statements"). The Historical Financial Statements present fairly in all material respects the consolidated financial position of the Lead Borrower and its consolidated subsidiaries as of the dates and for the periods referred to therein and the results of operations and cash flows for the periods then ended, and, except as set forth on Schedule 8.05, were prepared in accordance with GAAP applied on a consistent basis throughout the periods covered thereby, except as otherwise noted therein.

Section 8.06 No Material Adverse Effect. Except as disclosed in filings with the SEC prior to the DIP Closing Date, since June 30, 2019, there has been no event or circumstance that, individually or in the aggregate with other events or circumstances, has had or would reasonably be expected to have a Material Adverse Effect.

Section 8.07 Title to Properties; Possession Under Leases; Flood Documentation.

(a) Each of the Lead Borrower and the Subsidiaries has valid title in fee simple or equivalent to, or valid leasehold interests in, or easements or other limited property interests in, all its Real Properties and has valid title to its personal property and assets, in each case, subject to Permitted Liens and except for defects in title that do not materially interfere with its ability to conduct its business as currently conducted or to utilize such properties and assets for their intended purposes and except where the failures to have such title or interest would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect. All such properties and assets are free and clear of Liens, other than Permitted Liens or Liens arising by operation of law, subject to the provisions of the immediately preceding sentence.

(b) To the extent not previously delivered to JPMCB in its capacity as Prepetition Agent, as to all improved Material Real Property located in the United States which is subject to a Mortgage, (i) the Collateral Agent has received the Flood Documentation with respect to such Material Real Property on or prior to the granting of such Mortgage thereon, (ii) all flood hazard insurance policies required pursuant to Section 9.02(c) with respect to any such Material Real Property have been obtained and remain in full force and effect to the extent required by such Section, and (iii) except to the extent that the Lead Borrower has

previously given written notice thereof to the Collateral Agent, there has been, to the Lead Borrower's knowledge, no redesignation of any Material Real Property subject to a Mortgage into Special Flood Hazard Area.

(c) Schedule 1.01(B) hereto sets forth a complete list of Material Real Properties as of the DIP Closing Date.

Section 8.08 Subsidiaries.

(a) Schedule 8.08(a) (as may be updated pursuant to Section 13.12 of this Agreement) sets forth as of the DIP Closing Date the name and jurisdiction of incorporation, formation or organization of each Subsidiary of the Lead Borrower and, as to each such Subsidiary, the percentage of each class of Equity Interests owned by the Lead Borrower or by any such Subsidiary.

(b) As of the DIP Closing Date, after giving effect to the Transactions, there are no outstanding subscriptions, options, warrants, calls, rights or other agreements or commitments (other than stock options granted to employees or directors (or entities controlled by directors) and shares held by directors (or entities controlled by directors)) issued or agreed upon by the Lead Borrower or any Subsidiary or, to the actual knowledge of the Lead Borrower (without any duty to investigate), any Affiliate thereof relating to any Equity Interests of the Lead Borrower or any of the Subsidiaries, except as set forth on Schedule 8.08(b) (as may be updated pursuant to Section 13.12 of this Agreement).

Section 8.09 Litigation; Compliance with Law.

(a) There are no actions, suits, proceedings or investigations at law or in equity or by or on behalf of any Governmental Authority or in arbitration now pending, or, to the knowledge of the Lead Borrower or any other Borrower, threatened in writing against the Lead Borrower, any other Borrower or any of the Subsidiaries or any business, property or rights of any such person (i) that involve any Loan Document, to the extent that the applicable action, suit, proceeding or investigation is brought by the Lead Borrower, any other Borrower or any of their Subsidiaries or (ii) that would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect except for any action, suit or proceeding at law or in equity or by or on behalf of any Governmental Authority or in arbitration which has been disclosed on Form 10-K or Form 10-Q.

(b) None of the Lead Borrower, any other Borrower, the Subsidiaries and their respective properties or assets is in violation of (nor will the continued operation of their material properties and assets as currently conducted violate) any law, rule or regulation (including any zoning, building, ordinance, code or approval or any building permit, but excluding any Environmental Laws, which are the subject of Section 8.16) or any restriction of record or indenture, agreement or instrument affecting any Real Property, or is in default with respect to any judgment, writ, injunction or decree of any Governmental Authority, where such violation or default would reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

Section 8.10 Federal Reserve Regulations. No part of the proceeds of any Credit Event will be used by the Lead Borrower, the other Borrowers and their Subsidiaries in any manner that would result in a violation of Regulation T, Regulation U or Regulation X.

Section 8.11 Investment Company Act. None of the Borrowers or the other Loan Parties is required to be registered as an "investment company" within the meaning of the Investment Company Act of 1940, as amended.

Section 8.12 Use of Proceeds.

(a) The Lead Borrower will use the proceeds of the Interim DIP Term Loans to fund operating expenses and administrative expenses of the Chapter 11 Cases, in each case in accordance with the Applicable DIP Order.

(b) The Lead Borrower will use the proceeds of the DIP Term Loans funded on the DIP Term Loan Closing Date (i) *first* to consummate the Prepetition Obligations Refinancing and (ii) *second* to fund operating expenses and administrative expenses of the Chapter 11 Cases with any excess amount, in each case in accordance with the Applicable DIP Order.

(c) The Borrowers will use the proceeds of North American Revolving Loans to fund operating expenses and administrative expenses of the Chapter 11 Cases, in each case in accordance with the Applicable DIP Order.

(d) The Borrowers will use the proceeds of Swiss Revolving Loans for working capital needs and general corporate purposes; provided that (other than in the ordinary course of business consistent with past practices prior to the DIP Closing Date) no proceeds of any Swiss Revolving Loan shall be used directly or indirectly to fund the Debtors without the prior written consent of the DIP Agent and the Required Revolving Lenders.

Notwithstanding anything to the contrary in this Agreement, no portion of the Loans or the Letters of Credit shall be used in a manner contrary to the Applicable DIP Order.

Section 8.13 Tax. Except as would not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Effect,

(a) the Lead Borrower and each of the Subsidiaries has filed or caused to be filed all U.S. federal, state, provincial, local and non-U.S. Tax returns required to have been filed by it (including in its capacity as withholding agent) and each such Tax return is true and correct;

(b) the Lead Borrower and each of the Subsidiaries has timely paid or caused to be timely paid all Taxes shown to be due and payable by it on the returns referred to in clause (a) and all other Taxes or assessments (or made adequate provision (in accordance with GAAP) for the payment of all Taxes due), except Taxes or assessments for which the Lead Borrower or any of the Subsidiaries (as the case may be) has set aside on its books adequate reserves in accordance with GAAP and the amount thereof is being contested in good faith by appropriate action; and

(c) as of the DIP Closing Date, with respect to the Lead Borrower and each of the Subsidiaries, there are no claims being asserted in writing with respect to any Taxes.

Section 8.14 No Material Misstatements.

(a) All written information (other than the Projections, forward looking information and information of a general economic or industry specific nature) (the "Information") concerning the Lead Borrower, the other Borrowers, the Subsidiaries and the Transactions prepared by or on behalf of the foregoing or their representatives and made available to any Lenders or the Administrative Agent in connection with this Agreement or the Transactions, when taken as a whole, was true and correct in all material respects, as of the date such Information was furnished to the Lenders or the Administrative Agent, as applicable (and as of the DIP Closing Date, with respect to Information provided prior thereto) and did not, taken as a whole, contain any untrue statement of a material fact as of any such date or omit to state a

material fact necessary in order to make the statements contained therein, taken as a whole, not materially misleading in light of the circumstances under which such statements were made (giving effect to all supplements and updates provided thereto).

(b) The Projections and other forward looking information prepared by or on behalf of the Lead Borrower, the other Borrowers or any of their representatives and that have been made available to any Lenders or the Administrative Agent in connection with this Agreement or the Transactions have been prepared in good faith based upon assumptions believed by the Lead Borrower and the other Borrowers to be reasonable as of the date thereof (it being understood that such Projections and other forward looking information are as to future events and are not to be viewed as facts, such Projections and other forward looking information are subject to significant uncertainties and contingencies and that actual results during the period or periods covered by any such Projections or other forward looking information may differ significantly from the projected results, and that no assurance can be given that the projected results will be realized) and as of the date such Projections and information were furnished to the Lenders or the Administrative Agent.

Section 8.15 Employee Benefit Plans. Except by filing of the Chapter 11 Cases or otherwise as would not reasonably be expected, individually or in the aggregate, to have a Material Adverse Effect: (i) no Reportable Event has occurred during the past five years as to which the Lead Borrower, any of its Subsidiaries or any ERISA Affiliate was required to file a report with the PBGC; (ii) no ERISA Event has occurred or is reasonably expected to occur; and (iii) none of the Lead Borrower, the other Borrowers, the Subsidiaries or any of their ERISA Affiliates has received any written notification that any Multiemployer Plan is in reorganization or has been terminated within the meaning of Title IV of ERISA.

Section 8.16 Environmental Matters. Except as to matters that would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect: (a) no written notice, request for information, order, complaint or penalty has been received by the Lead Borrower or any of its Subsidiaries, and there are no judicial, administrative or other actions, suits or proceedings pending or, to the Lead Borrower's or any other Borrower's knowledge, threatened in writing which allege a violation of or liability under any Environmental Laws, in each case relating to the Lead Borrower or any of its Subsidiaries, (b) each of the Lead Borrower and its Subsidiaries has all environmental permits, licenses, concessions, authorizations and other approvals necessary for its operations to comply with all Environmental Laws ("Environmental Permits") and is, and in the prior eighteen (18) month period, has been, in compliance with the terms of such Environmental Permits and with all other Environmental Laws, (c) except as set forth on Schedule 8.16, no Hazardous Material is located at, on or under any property currently or, to the Lead Borrower's or any other Borrower's knowledge, formerly owned, operated or leased by the Lead Borrower or any of its Subsidiaries that would reasonably be expected to give rise to any cost, liability or obligation of the Lead Borrower or any of its Subsidiaries under any Environmental Laws or Environmental Permits, and no Hazardous Material has been generated, used, treated, stored, handled, disposed of or controlled, transported or released at any location in a manner that would reasonably be expected to give rise to any cost, liability or obligation of the Lead Borrower or any of its Subsidiaries under any Environmental Laws or Environmental Permits, (d) there are no agreements in which the Lead Borrower or any of its Subsidiaries has expressly assumed or undertaken responsibility for any known or reasonably likely liability or obligation of any other person arising under or relating to Environmental Laws, and (e) there has been no written environmental assessment or audit conducted (other than customary assessments or audits not revealing anything that would reasonably be expected to result in a Material Adverse Effect), by or on behalf of the Lead Borrower or any of the Subsidiaries of any property currently or, to the Lead Borrower's or any other Borrower's knowledge, formerly owned, operated or leased by the Lead Borrower or any of the Subsidiaries that has not been made available to the Administrative Agent prior to the DIP Closing Date.

Section 8.17 Security Documents.

(a) Each Security Document is effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) a legal, valid and enforceable security interest in the Collateral described therein and proceeds thereof, subject to (a) the effects of bankruptcy, insolvency, moratorium, reorganization, administration, examinership, fraudulent conveyance or other similar laws affecting creditors' rights generally, (b) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law) and (c) the entry of the Interim Order and, as applicable, the Final Order. As of the DIP Closing Date, in the case of the Pledged Collateral and U.S. Pledged Collateral described in the Initial U.S. Security Agreement, when certificates or promissory notes, as applicable, representing such Pledged Collateral and U.S. Pledged Collateral and required to be delivered under the Initial U.S. Security Agreement are delivered to the Collateral Agent, and in the case of the other Collateral described in the Initial U.S. Security Agreement (other than the Intellectual Property), when financing statements and other filings specified in the Perfection Certificate are filed in the offices specified in the Perfection Certificate, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien (subject to all Permitted Liens) on, and security interest in, all right, title and interest of the Loan Parties in such Collateral and, subject to Section 9-315 of the New York Uniform Commercial Code, the Australian PPSA and the Canadian PPSA, the proceeds thereof, as security for the Obligations to the extent perfection can be obtained by filing Uniform Commercial Code, Australian PPSA or Canadian PPSA financing statements or possession.

(b) When the Initial U.S. Security Agreement or an ancillary document thereunder is properly filed and recorded in the United States Patent and Trademark Office and the United States Copyright Office, and, with respect to Collateral in which a security interest cannot be perfected by such filings, upon the proper filing of the financing statements referred to in clause (a) above, the Collateral Agent (for the benefit of the Secured Parties) shall have a fully perfected Lien on, and security interest in, all right, title and interest of the U.S. Loan Parties thereunder in the material United States Intellectual Property included in the Collateral listed in such ancillary document (it being understood that subsequent recordings in the United States Patent and Trademark Office and the United States Copyright Office may be necessary to perfect a Lien on material registered Trademarks and patents, Trademark and patent applications, and registered copyrights acquired by the Loan Parties after the DIP Closing Date).

(c) The Mortgages, if any, on the DIP Closing Date Mortgaged Properties, and the Mortgages executed and delivered after the DIP Closing Date pursuant to Section 9.10, shall be effective to create in favor of the Collateral Agent (for the benefit of the Secured Parties) or, if so contemplated by the respective Mortgage, the Collateral Agent and the other Secured Parties, legal, valid and enforceable Liens on all of the Loan Parties' rights, titles and interests in and to the Mortgaged Property thereunder and the proceeds thereof (subject to (i) the effects of bankruptcy, insolvency, moratorium, reorganization, administration, examinership, fraudulent conveyance or other similar laws affecting creditors' rights generally and (ii) general principles of equity (regardless of whether such enforceability is considered in a proceeding in equity or at law)), and when such Mortgages are validly filed, registered or recorded in the proper real estate filing, registration or recording offices and any other required registrations have been validly completed by or on behalf of the Collateral Agent, and all relevant mortgage Taxes and recording and registration charges are duly paid, the Collateral Agent (for the benefit of the Secured Parties) shall have valid Liens with record or registered notice to third parties on, and security interests in, all rights, titles and interests of the Loan Parties in such Mortgaged Property and, to the extent applicable, subject to Section 9-315 of the Uniform Commercial Code, the proceeds thereof.

(d) Notwithstanding anything herein (including this Section 8.17) or in any other Loan Document to the contrary, no Borrower or any other Loan Party makes any representation or warranty as to the effects of perfection or non-perfection, the priority or the enforceability of any pledge of or security

interest in any Equity Interests of any Foreign Subsidiary (other than Foreign Subsidiaries organized in a Specified Jurisdiction), or as to the rights and remedies of the Agents or any Lender with respect thereto, under foreign law (other than any applicable Specified Foreign Law).

Section 8.18 [reserved].

Section 8.19 Labor Matters. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect: (a) there are no strikes or other labor disputes pending or, to the knowledge of the Lead Borrower and its Subsidiaries, threatened in writing against the Lead Borrower or any of the Subsidiaries; (b) the hours worked and payments made to employees of the Lead Borrower and the Subsidiaries have not been in violation of the Fair Labor Standards Act, the Fair Work Act 2009 (Cth) of Australia or any other applicable law dealing with such matters; and (c) all payments due from the Lead Borrower or any of the Subsidiaries or for which any claim may be made against the Lead Borrower or any of the Subsidiaries, on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of the Lead Borrower or such Subsidiary to the extent required by GAAP. Except as, individually or in the aggregate, would not reasonably be expected to have a Material Adverse Effect, the consummation of the Transactions will not give rise to a right of termination or right of renegotiation on the part of any union under any material collective bargaining agreement to which the Lead Borrower or any of the Subsidiaries (or any predecessor) is a party or by which the Lead Borrower or any of the Subsidiaries (or any predecessor) is bound.

Section 8.20 Insurance. Schedule 8.20 (as may be updated pursuant to Section 13.12 of this Agreement) sets forth a true, complete and correct description, in all material respects, of all material insurance (excluding any title insurance) maintained by or on behalf of the Lead Borrower or the Subsidiaries as of the DIP Closing Date. As of such date, such insurance is in full force and effect.

Section 8.21 Intellectual Property; Licenses, Etc. Except as would not reasonably be expected to have a Material Adverse Effect or as set forth in Schedule 8.21 (as may be updated pursuant to Section 13.12 of this Agreement), (a) the Lead Borrower and each of its Subsidiaries owns, or possesses the right to use, all Intellectual Property that is used or held for use or is otherwise reasonably necessary in the operation of their respective businesses (provided that this representation and warranty shall not be construed as a representation and warranty that the operation of the Lead Borrower's, and each of its Subsidiaries', businesses do not infringe, misappropriate or violate the Intellectual Property of any person, the sole representation and warranty in respect of which is set out in the following clause (b)), (b) to the knowledge of the Lead Borrower or any other Borrower, the operation of the Lead Borrower's, and each of its Subsidiaries', businesses is not interfering with, infringing upon, misappropriating or otherwise violating Intellectual Property of any other person, and (c) (i) no claim or litigation regarding any of the Intellectual Property owned by the Lead Borrower and its Subsidiaries is pending or, to the knowledge of the Lead Borrower or any other Borrower, threatened in writing and (ii) to the knowledge of the Lead Borrower or any other Borrower, no claim or litigation regarding any other Intellectual Property described in the foregoing clauses (a) and (b) is pending or threatened in writing.

Section 8.22 USA PATRIOT Act. Except as would not reasonably be expected to have a Material Adverse Effect, the Lead Borrower and each of its Subsidiaries is in compliance with the Patriot Act and the AML Legislation.

Section 8.23 Anti-Corruption Laws and Sanctions. The Lead Borrower has implemented and maintains in effect policies and procedures designed to promote and achieve compliance by the Lead Borrower, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions in all material respects. Neither the Lead Borrower nor any Subsidiary of the Lead Borrower, nor, to the knowledge of the Lead Borrower, any director, officer, agent, employee or affiliate

of the Lead Borrower or any of its Subsidiaries that, in each such case, is acting in any capacity under or pursuant to the Loan Documents or directly benefitting from the Credit Extensions, (i) is currently the subject of any Sanctions or (ii) is operating, organized/incorporated or residing in any Designated Jurisdiction except to the extent permissible for a Person required to comply with Sanctions. Neither the Lead Borrower nor any Subsidiary of the Lead Borrower will, directly or, to its knowledge, indirectly, use or lend, contribute, provide or otherwise make available the proceeds of any Credit Extension made pursuant to the terms of this Agreement to any Subsidiary, joint venture partner, or other person, (a) in furtherance of an offer, payment, promise to pay, or authorization of the payment or giving of money, or anything else of value, to any person in violation of any Anti-Corruption Laws, (b) to fund any activity or business in, of or with, any Designated Jurisdiction or any Sanctioned Person, in each case except to the extent permissible for a Person required to comply with Sanctions or (c) in any other manner that will result in any violation by the Lead Borrower or any Subsidiary of the Lead Borrower or such Subsidiary of Sanctions.

Section 8.24 [reserved].

Section 8.25 EEA Financial Institutions. No Loan Party is an Affected Financial Institution.

Section 8.26 Beneficial Ownership Certificate. As of the DIP Closing Date, the information included in the Beneficial Ownership Certification, if applicable, is true and correct in all material respects.

Section 8.27 Centre of Main Interests. For the purposes of Regulation (EU) 2015/848 of 20 May 2015 on insolvency proceedings (recast) (the "Regulation"), the centre of main interest of each Loan Party (as that term is used in Article 3(1) of the Regulation) that is incorporated in a jurisdiction to which the Regulation applies is situated in its jurisdiction of incorporation and it has no "establishment" (as that term is used in Article 2(10) of the Regulation) in any other jurisdiction.

Section 8.28 [reserved].

Section 8.29 [reserved].

Section 8.30 Borrowing Base Certificate. At the time of delivery of each Borrowing Base Certificate, (a) assuming that any eligibility criterion that requires the approval or satisfaction of the Administrative Agent has been approved by or is satisfactory to the Administrative Agent and assuming that such criterion has not been changed by the Administrative Agent, (i) each material Account reflected therein as eligible for inclusion in any Borrowing Base as an "Eligible Account" is an Eligible Account, (ii) the material Equipment reflected therein as eligible for inclusion in any Borrowing Base as "Eligible Equipment" is Eligible Equipment, (iii) the material Inventory reflected therein as eligible for inclusion in any Borrowing Base as "Eligible Inventory" is Eligible Inventory, (iv) the Trademarks reflected therein as eligible for inclusion in any Borrowing Base as "Eligible Trademarks" are Eligible Trademarks and (v) the Real Property reflected therein as eligible for inclusion in any Borrowing Base as "Eligible Real Property" is Eligible Real Property; and (b) the information contained in such Borrowing Base Certificate is accurate and complete in all material respects.

Section 8.31 Compliance with the Swiss Non-Bank Rules.

(a) Each Swiss Loan Party is in compliance with the Swiss Non-Bank Rules; provided, however, that no Default or Event of Default with respect to this Section 8.31 shall be deemed to exist due to any inaccuracy of the representation and warranty contained herein that arises from:

(i) a failure by one or more Lenders or Participants to comply with their obligations under Section 13.04(a);

(ii) a confirmation made by one or more Lenders or Participants to be one single Swiss Non-Qualifying Lender is incorrect;

(iii) one or more Lenders or Participants ceasing to be a Swiss Qualifying Lender (to the extent such Lender or Participant confirmed to be a Swiss Qualifying Lender) as a result of any reason attributable to such Lender or Participant;

(iv) an assignment or participation of any Loan under this Agreement to a Swiss Non-Qualifying Lender after the occurrence and during the continuance of an Event of Default; or

(v) an inaccurate representation or warranty by a Lender pursuant to Section 13.27.

(b) For the purposes of this Section 8.31, each Swiss Loan Party shall assume that, for the purpose of determining compliance with the Swiss Twenty Non-Bank Rule, the aggregate number of Lenders or Participants under this Agreement which are Swiss Non-Qualifying Lenders is ten (10).

Section 8.32 DIP Orders. Each DIP Order is, following the entry thereof, effective to create in favor of the Administrative Agent, for the benefit of the Secured Parties, a legal, valid, binding and enforceable perfected first priority priming security interest in the Collateral of the Debtors without the necessity of the execution of mortgages, security agreements, pledge agreements, financing statements or other agreements or documents.

ARTICLE 9 AFFIRMATIVE COVENANTS

The Borrowers covenant and agree with each Lender, each Issuing Bank and the Swingline Lender that from and after the DIP Closing Date until the Termination Date, unless the Required Lenders shall otherwise consent in writing, the Lead Borrower and the other Borrowers will, and will cause each of the Subsidiaries to:

Section 9.01 Existence; Business and Properties.

(a) Do or cause to be done all things necessary to preserve, renew and keep in full force and effect its legal existence, except (i) in the case of a Subsidiary of the Lead Borrower (other than a Borrower), where the failure to do so would not reasonably be expected to have a Material Adverse Effect, (ii) as otherwise permitted under Section 10.05, and (iii) for the liquidation or dissolution of Subsidiaries (other than a Borrower) if the assets of such Subsidiaries to the extent they exceed estimated liabilities are acquired by the Lead Borrower or a Wholly Owned Subsidiary of the Lead Borrower in such liquidation or dissolution; provided that (x) Guarantors may not be liquidated into Subsidiaries that are not Loan Parties, and (y) U.S. Subsidiaries may not be liquidated into Foreign Subsidiaries (except in each case as permitted under Section 10.05).

(b) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, do or cause to be done all things necessary to (i) except with respect to Intellectual Property, which is addressed in clause (c) below, lawfully obtain, preserve, renew, extend and keep in full force and effect the permits, franchises, authorizations, licenses and rights with respect thereto used in the conduct of its business, and (ii) at all times maintain, protect and preserve all property necessary to the normal conduct of its business and keep such property in good repair, working order and condition (ordinary wear and tear

excepted), from time to time make, or cause to be made, all needful and proper repairs, renewals, additions, improvements and replacements thereto necessary in order that the business carried on in connection therewith, if any, may be properly conducted at all times (in each case except as permitted by this Agreement).

(c) Except where the failure to do so would not reasonably be expected to have a Material Adverse Effect, take all steps necessary to preserve, prosecute, maintain, renew, extend, protect, enforce and keep in full force and effect the Intellectual Property which is owned by the Lead Borrower or its Subsidiaries, to the extent used or held for use in the conduct of its business.

Section 9.02 Insurance.

(a) Maintain, with financially sound and reputable insurance companies (except to the extent that any insurer ceases to be financially sound and reputable after the DIP Closing Date, in which case such Loan Party shall promptly replace such insurer with a financially sound and reputable insurer), insurance (subject to customary deductibles and retentions) in such amounts and against such risks as are customarily maintained by similarly situated companies engaged in the same or Similar Businesses operating in the same or similar locations, and within ninety (90) days after the DIP Closing Date (or such later date as the Collateral Agent may agree in writing in its reasonable discretion), cause the Collateral Agent to be listed as a co-insured or co-loss payee, on property and casualty policies with respect to tangible personal property and assets constituting Collateral located in any Specified Jurisdiction and as an additional or co-insured on all general liability policies. Notwithstanding the foregoing, the Lead Borrower and the Subsidiaries may (i) maintain all such insurance with any combination of primary and excess insurance, (ii) maintain any or all such insurance pursuant to master or so-called "blanket policies" insuring any or all Collateral and/or other Real Property which does not constitute Collateral (and in such event the co-payee endorsement shall be limited or otherwise modified accordingly), and/or (iii) self-insure with respect to such risks with respect to which companies of established reputation engaged in the same general line of business in the same general area usually self-insure.

(b) Except as the Collateral Agent may agree in its reasonable discretion, within thirty (30) days after the later of the DIP Closing Date and, with respect to any DIP Closing Date Mortgaged Property, the date on which such Mortgaged Property is required to be encumbered by a Mortgage hereunder (or such later date (A) not to exceed an additional fifteen (15) days if reasonably required by the Lead Borrower or (B) as such period may be further extended in the sole discretion of the Collateral Agent), subject to Section 9.02(a)(i), cause all such property and casualty insurance policies with respect to the Mortgaged Property to be endorsed or otherwise amended to include a "standard" lender's loss payable endorsement, in form and substance reasonably satisfactory to the Collateral Agent, deliver a certificate of insurance with respect to each Mortgaged Property to the Collateral Agent; deliver to the Collateral Agent, prior to or concurrently with the cancellation or nonrenewal of any such policy of insurance covered by this clause (b), a copy of a renewal or replacement policy (or other evidence of renewal of a policy previously delivered to the Collateral Agent), or insurance certificate with respect thereto, together with evidence reasonably satisfactory to the Collateral Agent of payment of the premium therefor, in each case of the foregoing, to the extent customarily maintained, purchased or provided to, or at the request of, lenders by similarly situated companies in connection with credit facilities of this nature.

(c) Prior to the delivery of the applicable Mortgage, if any portion of any Mortgaged Property located in the United States is at any time located in an area identified by the Federal Emergency Management Agency (or any successor agency thereto) as a "special flood hazard area" (each, a "Special Flood Hazard Area") with respect to which flood insurance has been made available under the Flood Insurance Laws (as now or hereafter in effect or successor act thereto), (i) obtain and maintain, with a financially sound and reputable insurer (except to the extent that any insurer insuring such Mortgaged

Property of such Loan Party ceases to be financially sound and reputable after the DIP Closing Date, in which case such Loan Party shall promptly replace such insurer with a financially sound and reputable insurer), such flood insurance in such reasonable total amount as the Collateral Agent and the Lenders may from time to time reasonably require and otherwise sufficient to comply with all applicable rules and regulations promulgated pursuant to the Flood Insurance Laws and (ii) promptly upon request of the Collateral Agent or any Lender, deliver to the Collateral Agent or such Lender, as applicable, evidence of such compliance in form and substance reasonably acceptable to the Collateral Agent or such Lender, including, without limitation, evidence of annual renewals of such flood insurance.

(d) In connection with the covenants set forth in this Section 9.02, it is understood and agreed that:

(i) the Administrative Agent, the Collateral Agent, the Lenders and their respective agents or employees shall not be liable for any loss or damage insured by the insurance policies required to be maintained under this Section 9.02, it being understood that (A) the Loan Parties shall look solely to their insurance companies or any other parties other than the aforesaid parties for the recovery of such loss or damage and (B) such insurance companies shall have no rights of subrogation against the Administrative Agent, the Collateral Agent, the Lenders or their agents or employees. If, however, the insurance policies, as a matter of the internal policy of such insurer, do not provide waiver of subrogation rights against such parties, as required above, then the Borrowers, on behalf of themselves and behalf of each of the Lead Borrower and the Subsidiaries, hereby agree, to the extent permitted by law, to waive, and further agree to cause each of the Lead Borrower and their Subsidiaries to waive, its right of recovery, if any, against the Administrative Agent, the Collateral Agent, the Lenders and their agents and employees;

(ii) the designation of any form, type or amount of insurance coverage by the Collateral Agent (including acting in the capacity as the Collateral Agent) under this Section 9.02 shall in no event be deemed a representation, warranty or advice by the Collateral Agent or the Lenders that such insurance is adequate for the purposes of the business of the Lead Borrower and the Subsidiaries or the protection of their properties; and

(iii) the amount and type of insurance that the Lead Borrower and its Subsidiaries have in effect as of the DIP Closing Date and the certificates and endorsements, if any, listing the Collateral Agent as a co-insured, co-loss payee or additional insured, as the case may be, satisfy for all purposes the requirements of this Section 9.02.

Section 9.03 Taxes. Pay its obligations in respect of all Tax liabilities, assessments and governmental charges, before the same shall become delinquent or in default, except where (i) the Lead Borrower or a Subsidiary thereof has set aside on its books adequate reserves therefor in accordance with GAAP and the amount thereof is being contested in good faith by appropriate action and/or (ii) the failure to make payment could not reasonably be expected, individually or in the aggregate, to result in a Material Adverse Effect.

Section 9.04 Financial Statements, Reports, Etc. Furnish to the Administrative Agent (which will promptly furnish such information to the Lenders (including their Public-Siders)):

(a) within ninety (90) days (or one hundred five (105) days with respect to the fiscal year ending on or about June 30, 2020) after the end of each fiscal year, commencing with the first fiscal year ending on or about June 30, 2020, a consolidated balance sheet and related statements of operations, cash flows and owners' equity showing the financial position of the Lead Borrower and its Subsidiaries as of the close of such fiscal year and the consolidated results of their operations during such year and setting forth

in comparative form the corresponding figures for the prior fiscal year, which consolidated balance sheet and related statements of operations, cash flows and owners' equity shall be accompanied by customary management's discussion and analysis and audited by independent public accountants of recognized national standing and accompanied by an opinion of such accountants (which opinion shall not be qualified as to scope of audit or as to the status of the Lead Borrower or any Material Subsidiary as a going concern, except that such opinion (i) may contain references (excluding formal qualifications) regarding audits performed by other auditors as contemplated by AU Section 543, Part of Audit Performed by Other Independent Auditors (or any successor or similar standard under GAAP) and (ii) may include a going concern qualification or like qualification or exception relating to an upcoming maturity date under any Indebtedness incurred under this Agreement occurring within one year from the time such opinion is delivered or relating to the Debtors' financial distress and filing of the Cases) to the effect that such consolidated financial statements fairly present, in all material respects, the financial position and results of operations of the Lead Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP;

(b) within forty-five (45) days after the end of each of the first three fiscal quarters of each fiscal year (commencing with the first fiscal quarter ending after the DIP Closing Date), a consolidated balance sheet and related statements of operations and cash flows showing the financial position of the Lead Borrower and its Subsidiaries as of the close of such fiscal quarter and the consolidated results of their operations during such fiscal quarter and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the corresponding periods of the prior fiscal year, all of which shall be in reasonable detail, which consolidated balance sheet and related statements of operations and cash flows shall be accompanied by customary management's discussion and analysis and which consolidated balance sheet and related statements of operations and cash flows shall be certified by a Financial Officer of the Lead Borrower on behalf of the Lead Borrower as fairly presenting, in all material respects, the financial position and results of operations of the Lead Borrower and its Subsidiaries on a consolidated basis in accordance with GAAP (subject to normal year-end audit adjustments and the absence of footnotes);

(c) concurrently with any delivery of financial statements under clause (a) or (b) above, a Compliance Certificate of a Financial Officer of the Lead Borrower certifying that no Event of Default or Default has occurred since the date of the last certificate delivered pursuant to this Section 9.04(c) (or since the DIP Closing Date in the case of the first such certificate) or, if such an Event of Default or Default has occurred, specifying the nature and extent thereof and any corrective action taken or proposed to be taken with respect thereto;

(d) promptly after the same become publicly available, copies of all periodic and other publicly available reports, proxy statements and, to the extent requested by the Administrative Agent, other materials filed by the Lead Borrower or any of the Subsidiaries with the SEC, or distributed to its stockholders or shareholders generally, as applicable;

(e) promptly, from time to time, the financial statements of the Foreign Loan Parties prepared on a legal entity basis as the Administrative Agent may reasonably request (for itself or on behalf of any Lender);

(f) concurrently with the delivery of financial statements under clause (a) above, an updated Perfection Certificate reflecting all changes to the information required to be disclosed by the terms thereof since the date of the information most recently received pursuant to this clause (f) or Section 9.10(d) (or a certificate of a Responsible Officer certifying as to the absence of any changes to the previously delivered update, if applicable);

(g) [reserved];

(h) promptly following any request therefor, information and documentation reasonably requested by the Administrative Agent or any Lender for purposes of compliance with applicable "know your customer" and anti-money laundering rules and regulations, including the Patriot Act, the AML Legislation and the Beneficial Ownership Regulation;

(i) promptly, from time to time, such other information regarding the operations, business affairs and financial condition of the Lead Borrower or any of its Subsidiaries, or compliance with the terms of any Loan Document as in each case the Administrative Agent may reasonably request (for itself or on behalf of any Lender); provided, however, that, notwithstanding any provision hereof or any other Loan Document to the contrary, no Loan Party nor any Subsidiary thereof shall be required to disclose or discuss, or permit the inspection, examination or making of extracts of, any records, books, information or account or other matter (i) in respect of which disclosure to the Administrative Agent, any Lender or their representatives is then prohibited by applicable law or any agreement binding on any Loan Party or any Subsidiary thereof, (ii) that is protected from disclosure by the attorney-client privilege or the attorney work product privilege or (iii) constitutes non-financial trade secrets or non-financial proprietary information (the "Disclosure Exceptions");

(j) as soon as available and in any event no later than 30 days after the end of each fiscal month, the unaudited consolidated balance sheet and related income statements showing the financial position of Lead Borrower and its Subsidiaries as of the close of such month and the consolidated results of their operations during such month and the then-elapsed portion of the fiscal year and setting forth in comparative form the corresponding figures for the prior fiscal year; and

(k) by Thursday of each week, information in reasonable detail regarding the Lead Borrower's and its Subsidiaries' sales receipts from their respective operations.

Documents required to be delivered pursuant to Section 9.04(a), 9.04(b) or 9.04(d), (1) will be deemed to have been delivered hereunder upon the Lead Borrower filing such documents with the SEC via the EDGAR filing system (or any successor system) to the extent such documents are publicly available and (2) otherwise may be delivered electronically and, if so otherwise delivered electronically, shall be deemed to have been delivered on the date (A) on which the Lead Borrower posts such documents, or provides a link thereto, on the Lead Borrower's website on the Internet; or (B) on which such documents are posted on the Lead Borrower's behalf on an Internet or intranet website, if any, to which the Lenders and the Administrative Agent have access (whether a commercial, third-party website or sponsored by the Administrative Agent); provided that, the Lead Borrower shall notify (which may be by electronic mail) the Administrative Agent (which shall notify each Lender) of the posting of any such document pursuant to clause (2) and, promptly upon request by the Administrative Agent, provide to the Administrative Agent by electronic mail an electronic version (i.e., a soft copy) of any such document posted pursuant to clause (2) specifically requested by the Administrative Agent.

The Lead Borrower represents and warrants that each of it and its Controlling and Controlled entities, in each case, if any (collectively with the Lead Borrower, the "Relevant Entities"), either (i) has no SEC registered or unregistered, publicly traded securities outstanding, or (ii) files its financial statements with the SEC and/or makes its financial statements available to potential holders of its securities, and, accordingly, the Lead Borrower hereby (i) authorizes the Administrative Agent to make the financial statements to be provided under Sections 9.04(a) or 9.04(b) above, along with the Loan Documents, available to Public-Siders and (ii) agrees that at the time such financial statements are provided hereunder, they shall already have been made available to holders of any such securities. The Lead Borrower will not request that any other material be posted to Public-Siders without expressly representing and warranting to the Administrative Agent in writing that such materials do not constitute material non-public information within the meaning of the federal securities laws or that the Relevant Entities have no outstanding SEC

registered or unregistered, publicly traded securities. Notwithstanding anything herein to the contrary, in no event shall the Lead Borrower request that the Administrative Agent make available to Public-Siders budgets or any certificates, reports or calculations with respect to the Lead Borrower's compliance with the covenants contained herein.

Section 9.05 Litigation and Other Notices. Furnish to the Administrative Agent (which will promptly thereafter furnish to the Lenders) written notice of the following promptly after any Responsible Officer of any Borrower obtains actual knowledge thereof:

(a) any Event of Default or Default, specifying the nature and extent thereof and the corrective action (if any) proposed to be taken with respect thereto;

(b) the filing or commencement of, or any written threat or notice of intention of any person to file or commence, any action, suit or proceeding, whether at law or in equity or by or before any Governmental Authority or in arbitration, against the Lead Borrower or any of the Subsidiaries as to which an adverse determination is reasonably probable and which, if adversely determined, would reasonably be expected to have a Material Adverse Effect;

(c) any other development specific to the Lead Borrower or any of the Subsidiaries that is not a matter of general public knowledge and that has had, or would reasonably be expected to have, a Material Adverse Effect; and

(d) the occurrence of any ERISA Event that, together with all other ERISA Events that have occurred, would reasonably be expected to have a Material Adverse Effect.

Each notice delivered under this Section 9.05 (i) shall be in writing, (ii) shall contain a heading or a reference line that reads "Notice under Section 9.05 of [ ] Credit Agreement dated [ ]" and (iii) shall be accompanied by a statement of a Responsible Officer of the Lead Borrower setting forth the details of the event or development requiring such notice and any action taken or proposed to be taken with respect thereto.

Section 9.06 Compliance with Laws. Comply with all laws, rules, regulations and orders of any Governmental Authority applicable to it or its property, except where the failure to do so, individually or in the aggregate, would not reasonably be expected to result in a Material Adverse Effect; provided that this Section 9.06 shall not apply to Environmental Laws, which are the subject of Section 9.09, or to laws related to Taxes, which are the subject of Section 9.03. The Lead Borrower will implement and maintain in effect and enforce policies and procedures designed to promote and achieve compliance by the Lead Borrower, its Subsidiaries and their respective directors, officers and employees with Anti-Corruption Laws and applicable Sanctions in all material respects.

Section 9.07 Maintaining Records; Access to Properties and Inspections.

(a) Maintain all financial records to enable the preparation of financial statements in accordance with GAAP and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender to visit and inspect the financial records and the properties of the Lead Borrower or any of the Subsidiaries at reasonable times, upon reasonable prior notice to the Lead Borrower, and as often as reasonably requested and to make extracts from and copies of such financial records, and permit any persons designated by the Administrative Agent or, upon the occurrence and during the continuance of an Event of Default, any Lender upon reasonable prior notice to the Lead Borrower to discuss the affairs, finances and condition of the Lead Borrower or any of the Subsidiaries with the officers thereof and independent accountants therefor (so long as the Lead

Borrower has the opportunity to participate in any such discussions with such accountants), in each case, subject to the Disclosure Exceptions and to reasonable requirements of confidentiality, including requirements imposed by law or by contract.

(b) The Lead Borrower will permit the Administrative Agent, subject to reasonable advance notice to, and reasonable coordination with, the Lead Borrower and during normal business hours, to visit and inspect the properties of any Borrower, at the Borrower's expense as provided in clause (c) below, inspect, audit and make extracts from any Borrower's corporate, financial or operating records, and discuss with its officers, employees, agents, advisors and independent accountants (subject to such accountants' customary policies and procedures) such Borrower's business, financial condition, assets and results of operations (it being understood that a representative of the Lead Borrower and such Borrower shall be permitted to be present in any discussions with officers, employees, agent, advisors and independent accountants); provided that the foregoing, in each case, shall be subject to the Disclosure Exceptions and to reasonable requirements of confidentiality, including requirements imposed by law or contract; provided further that, subject to the final sentence of this Section 9.07(b), the Administrative Agent shall only be permitted to conduct one field examination and the Lead Borrower shall be required to provide the Administrative Agent with one inventory appraisal conducted by an appraiser chosen by the Administrative Agent and consented to by the Lead Borrower (such consent not to be unreasonably withheld or delayed) in a form and on a basis reasonably satisfactory to the Administrative Agent with respect to any Collateral comprising the Aggregate Borrowing Base per 12-month period; provided further that if at any time Aggregate Availability is less than the greater of (x) 15.0% of the Line Cap and (y) $45,000,000 for a period of five (5) consecutive Business Days during such 12-month period, in each case, one additional field examination and one additional inventory appraisal will be permitted in such 12-month period, except that during the existence and continuance of an Event of Default, there shall be no limit on the number of additional field examinations and inventory appraisals that shall be permitted at the Administrative Agent's request. Notwithstanding the foregoing, additional appraisals of equipment, trademarks or real property shall not be required unless initiated at a time when an Event of Default has occurred and is continuing; provided that (i) not more than one (1) time per 12-month period, the Lead Borrower may, in its sole discretion and expense, request that the Administrative Agent (and, in such event, the Administrative Agent shall promptly) order an appraisal of specified equipment being newly added to any Borrowing Base from an appraiser selected and engaged by the Administrative Agent and consented to by the Lead Borrower (such consent not to be unreasonably withheld, delayed or conditioned) to determine the increase to the Borrowing Bases after the inclusion of such specified equipment and (ii) not more than one (1) time per 12-month period, the Lead Borrower may, in its sole discretion and expense, request that the Administrative Agent (and, in such event, the Administrative Agent shall promptly) order updated appraisals of all equipment from an appraiser selected and engaged by the Administrative Agent and consented to by the Lead Borrower (such consent not to be unreasonably withheld, delayed or conditioned) to redetermine the fixed asset components of the Borrowing Bases based on such appraisals (which redetermination may result in the increase or decrease of such fixed asset components). No such inspection or visit shall unduly interfere with the business or operations of any Borrower, nor result in any damage to the property or other Collateral. No inspection shall involve invasive testing without the prior written consent of the Lead Borrower. Neither the Administrative Agent nor any Lender shall have any duty to any Borrower to make any inspection nor to share any results of any inspection, appraisal or report with any Borrower, except that the Administrative Agent shall promptly forward copies to the Lead Borrower of any appraisals, environmental assessments and/or other final work product that is produced by a third party for the Administrative Agent in respect of any appraisal or environmental assessment of the Lead Borrower's and/or any of its Subsidiaries' assets (excluding, for the avoidance of doubt, any work product from any field examination). Each of the Borrowers acknowledges that all inspections, appraisals and reports are prepared by the Administrative Agent and Lenders for their purposes, and the Borrowers shall not be entitled to rely upon them. Notwithstanding the foregoing, from and after the DIP Closing Date until December 31, 2020 the Administrative Agent may elect to require that a new inventory appraisal be

conducted by an appraiser chosen by the Administrative Agent and the limitations set forth in the second proviso of this Section 9.07(b) shall not apply to such inventory appraisal in any respect.

(c) The Lead Borrower will reimburse (or will cause to be reimbursed) the Administrative Agent for all reasonable and documented out-of-pocket costs and expenses (other than any legal fees or costs and expenses covered under Section 13.01) of the Administrative Agent in connection with (i) one examination per fiscal year of any Borrower's books and records as described in clause (a) above and (ii) field examinations and appraisals of inventory, equipment, trademarks and real property comprising the Aggregate Borrowing Base, in each case subject to the limitations on such examinations, audits and appraisals permitted under the preceding paragraph. Subject to and without limiting the foregoing, the Borrowers specifically agree to pay the Administrative Agent's then standard charges for examination activities, including the standard charges of the Administrative Agent's internal appraisal group. This Section 9.07 shall not be construed to limit the Administrative Agent's right to use third parties for such purposes.

(d) Notwithstanding anything to the contrary in this Section 9.07:

(i) the Administrative Agent or its counsel may, at the Administrative Agent's sole discretion, engage one or more financial or other advisors or consultants satisfactory to the Administrative Agent, to advise and assist the Administrative Agent, the Administrative Agent's counsel and the Secured Parties with their on-going assessment of the Collateral, the Lead Borrower's and its Subsidiaries' financial performance and their ability to repay the Obligations and all other matters relating to the Chapter 11 Cases. The Administrative Agent and the other Secured Parties may elect to maintain the confidentiality of any conclusions reached or reports prepared by such consultant and may also provide that the consultant's conclusions shall be covered by the attorney work-product privilege. The Loan Parties shall reimburse the Administrative Agent for any and all reasonable and documented fees and expenses of such advisors and/or consultants in accordance with the Applicable DIP Order.

(ii) Without limiting the Secured Parties' rights under the Credit Agreement and other Loan Documents, the Lead Borrower and the other Loan Parties hereby agree to: (A) give the Administrative Agent and its Representatives reasonable access to the offices, properties, officers, employees, accountants, auditors, counsel and other representatives, books and records of the Lead Borrower and the other Loan Parties, (B) furnish to the Administrative Agent and its Representatives such financial, operating and property related data and other information as such persons reasonably request and (C) instruct the Lead Borrower's and any other Loan Party's employees and financial advisors to cooperate reasonably with the Administrative Agent and its Representatives in respect of the aforementioned clauses (A) and (B)); provided, however, that, with respect to this Section 9.07(d), notwithstanding any provision hereof or any other Loan Document to the contrary, no Loan Party nor any Subsidiary thereof shall be required to disclose or discuss, or permit the inspection, examination or making of extracts of, any records, books, information or account or other matter (1) in respect of which disclosure to the Administrative Agent, any Lender or their representatives is then prohibited by applicable law or any agreement in effect on the DIP Closing Date that is binding on any Loan Party or any Subsidiary thereof or (2) that is protected from disclosure by the attorney-client privilege or the attorney work product privilege (the "Specified Disclosure Exceptions"). For purposes of this Section 9.07(d), the term "Representatives" shall mean the Administrative Agent's employees, agents, representatives, advisors and consultants (including any investment banker, financial advisor, accountant, legal counsel, agent, representative or expert retained by or acting on behalf of the Administrative Agent).

(iii) Subject to the Specified Disclosure Exceptions, the Lead Borrower and the other Loan Parties each irrevocably authorizes, and shall direct, any financial advisors, consultants or investment bankers that are representing any or all of the Loan Parties in connection with this Agreement and the other Loan Documents (the foregoing, collectively, and excluding, for the avoidance of doubt, JPMCB and its Affiliates, the "Financial Advisors") to: (A) regularly offer to consult with (and consult with if so requested), and respond to the inquiries of, the Administrative Agent, the other Secured Parties and their respective Representatives identified by the Administrative Agent for such purpose concerning any and all material matters relating to (1) the affairs, finances and businesses of the Lead Borrower or any other Loan Party, (2) the assets and capital stock of the Lead Borrower or any other Loan Party, (3) any aspect of this Agreement or the other Loan Documents, (4) any aspect of the Chapter 11 Cases (including, but not limited to, any aspect of a sale under section 363 of the Bankruptcy Code and any restructuring- or sale-related negotiations with the Creditors' Committee, the ad hoc group of unsecured noteholders, or any parties in interest), and/or (5) the Financial Advisors' activities related to any of the foregoing (including, without limitation, communications outside the presence of any representatives of the Lead Borrower or any other Loan Party) and (B) offer to provide (and provide if the Administrative Agent, the other Secured Parties and/or their Representatives request) weekly updates on a conference call with the Administrative Agent, the other Secured Parties and/or their respective Representatives.

(iv) Subject to the Specified Disclosure Exceptions, each of the Lead Borrower and the other Loan Parties shall, and shall direct its officers, directors, employees and advisors to, cooperate fully with the Administrative Agent in furnishing information as and when reasonably requested by the Administrative Agent or any other Secured Party regarding the Collateral or the Lead Borrower's or any other Loan Party's financial affairs, finances, financial condition, business and operations. Subject to the Specified Disclosure Exceptions, the Lead Borrower and each other Loan Party authorizes the Administrative Agent to meet and/or have discussions with any of their officers, directors, employees and advisors from time to time as reasonably requested by the Administrative Agent to discuss any material matters regarding the Collateral or the Lead Borrower's or any other Loan Party's financial affairs, finances, financial condition, business and operations, and shall direct and authorize all such persons and entities to fully disclose to the Administrative Agent all information reasonably requested by the Administrative Agent regarding the foregoing. The Lead Borrower and the other Loan Parties each waives and releases any such officer, director, employee and advisor from the operation and provisions of any confidentiality agreement with the Lead Borrower or such other Loan Party, as the case may be, such that such person or entity is not prohibited from providing any of the foregoing information to the Administrative Agent or any other Secured Party.

Section 9.08 Use of Proceeds. Use the proceeds of the Loans made in the manner contemplated by Section 8.12 and Section 8.23.

Section 9.09 Compliance with Environmental Laws.

(a) Comply, and make reasonable efforts to cause all lessees and other persons occupying its properties to comply, with all applicable Environmental Laws; and obtain and renew all required Environmental Permits, except, in each case with respect to this Section 9.09, to the extent the failure to do so would not reasonably be expected to have, individually or in the aggregate, a Material Adverse Effect.

(b) Comply, in all material respects, with the terms and conditions of all closure letters issued by any state or federal Governmental Authority applicable to the facility located at 3300 N. 124th Street, Wauwatosa, Wisconsin regarding the presence or remediation of any Hazardous Materials.

Section 9.10 Further Assurances; Additional Guarantors; Additional Security.

(a) Execute any and all further documents, financing statements, agreements and instruments, and take all such further actions (including the filing and recording of financing statements and other documents and the delivery of notifications to counterparties and the registration in any applicable public registry), that may be required by the Security Documents or that the Collateral Agent may reasonably request (including, without limitation, those required by applicable law), to satisfy the Collateral and Guarantee Requirement and to cause the Collateral and Guarantee Requirement to be and remain satisfied, all at the expense of the Loan Parties and provide to the Collateral Agent, from time to time upon reasonable request, evidence reasonably satisfactory to the Collateral Agent as to the perfection of the Liens created or intended to be created by the Security Documents.

(b) If any asset (other than Real Property) is acquired by any Loan Party (including, without limitation, any acquisition pursuant to a Delaware LLC Division) after the DIP Closing Date or owned by an entity at the time it becomes a Guarantor (in each case other than (x) assets constituting Collateral under a Security Document that automatically become subject to the Lien of such Security Document upon acquisition thereof, (y) assets constituting Excluded Property and (z)(i) in the case of a Loan Party organized under the laws of the United States or any state thereof, assets (other than Equity Interests) owned thereby and located outside of the United States, and (ii) in the case of a Loan Party organized or incorporated under the laws of any Specified Jurisdiction, assets (other than Equity Interests) owned thereby and located outside of such Specified Jurisdiction), such Loan Party will, (A) notify the Collateral Agent of such acquisition or ownership; provided that this clause (A) will be deemed satisfied with respect to any applicable asset so long as such notice is delivered on the first date on which financial statements are required to be delivered pursuant to Section 9.04(a) or (b) which occurs at least ten (10) Business Days after the acquisition of such asset, or at any time prior thereto) and (B) cause such asset to be subjected to a Lien (subject to any Permitted Liens) securing the Obligations by, and take, and cause the Guarantors to take, such actions as shall be reasonably requested by the Collateral Agent to satisfy the Collateral and Guarantee Requirement to be satisfied with respect to such asset, including actions described in clause (a) of this Section 9.10, all at the expense of the Loan Parties, subject to the penultimate paragraph of this Section 9.10.

(c) Grant and cause each of the Guarantors to grant to the Collateral Agent (or to all the Secured Parties, if necessary or customary under applicable local law) mortgages on any Material Real Property of such Loan Parties, as applicable, that are not Mortgaged Property as of the DIP Closing Date, to the extent acquired after the DIP Closing Date or to the extent a new Guarantor owns Material Real Property after the DIP Closing Date, within thirty (30) days after such acquisition or such Real Property becoming Material Real Property or such new Guarantor becoming a Guarantor, as applicable, or such later date as the Collateral Agent may agree in its reasonable discretion, pursuant to documentation in form and substance reasonably satisfactory to the Collateral Agent and the Lead Borrower (each, an "Additional Mortgage"), which mortgage shall constitute valid and enforceable Liens subject to no other Liens except Permitted Liens and record, register or file, and cause each such Subsidiary to record, register or file, the Additional Mortgage or instruments related thereto in such manner and in such places as is required by law to establish, perfect, preserve and protect the Liens in favor of the Collateral Agent (for the benefit of the Secured Parties) required to be granted pursuant to the Additional Mortgages and pay, and cause each such Subsidiary to pay, in full, all Taxes, fees and other charges required to be paid in connection with such recording, registration or filing, in each case subject to the penultimate paragraph of this Section 9.10. Unless otherwise waived by the Collateral Agent, with respect to each such Additional Mortgage, the Borrowers shall cause the requirements set forth in clauses (b)(iii), (h) and (i) of the definition of "Collateral and Guarantee Requirement" to be satisfied with respect to such Material Real Property.

Notwithstanding the foregoing, the Collateral Agent shall not enter into any Mortgage in respect of any Real Property acquired by any Loan Party after the DIP Closing Date until (1) the date that occurs forty-five (45) days after the Collateral Agent has delivered to the Lenders (which may be delivered electronically) the following documents in respect of such Real Property: (i) a completed flood hazard determination from a third party vendor, (ii) if such Real Property is located in a "special flood hazard area," (A) a notification to the applicable Loan Party of that fact and (if applicable) notification to the applicable Loan Party that flood insurance is not available and (B) evidence of receipt by the applicable Loan Party of such notice, and (iii) if such notice is required to be provided to the applicable Loan Party and flood insurance is available in the community in which such Real Property is located, evidence of flood insurance, and (2) the Collateral Agent shall have received written confirmation from the Lenders that flood insurance due diligence and flood insurance compliance has been completed by the Lenders (such written confirmation not to be unreasonably conditioned, withheld or delayed).

(d) If any additional direct or indirect Subsidiary of the Lead Borrower (i) is formed (including, without limitation, the formation of any Subsidiary of the Lead Borrower that is a Delaware Divided LLC), acquired or continues to be a Subsidiary of the Lead Borrower but ceases to constitute an Excluded Subsidiary following the DIP Closing Date and such Subsidiary is (1) a Wholly Owned Subsidiary which is a U.S. Subsidiary or a Foreign Subsidiary organized or incorporated in a Specified Jurisdiction and which is not an Excluded Subsidiary or (2) any other U.S. Subsidiary or Foreign Subsidiary organized or incorporated in a Specified Jurisdiction that may be designated by the Lead Borrower in its sole discretion or (ii) that is not then a Borrower or a Guarantor guarantees or incurs any capital markets Indebtedness of the Lead Borrower, the other Borrowers or any Subsidiary of the Lead Borrower with an aggregate principal amount in excess of $50,000,000 or is designated by the Lead Borrower in its sole discretion to become a Guarantor (if, in the case of such a Subsidiary designated by the Lead Borrower, such Subsidiary is a U.S. Subsidiary or a Foreign Subsidiary organized or incorporated in a Specified Jurisdiction), in each case, within twenty (20) days after the date such Subsidiary is formed or acquired or meets such criteria (or first becomes subject to such requirement) or, in the case of a Subsidiary that ceases to be an Excluded Subsidiary based on its assets and/or revenues, within twenty (20) days after the end of the quarter in which such change in status occurs (or, in each of the foregoing cases, such longer period as the Collateral Agent may agree in its sole discretion), notify the Collateral Agent thereof and, within thirty (30) days after the date such Subsidiary is formed or acquired or meets such criteria (or first becomes subject to such requirement) or, in the case of such a Subsidiary that ceases to be an Excluded Subsidiary, within twenty (20) days after the end of the quarter in which such change in status occurs or, in the case of clause (ii) above, twenty (20) Business Days following the date such Indebtedness is guaranteed or incurred by the applicable Subsidiary) (or, in each of the foregoing cases, such longer period as the Collateral Agent may agree in its sole discretion), cause such Subsidiary to become a Guarantor and cause the Collateral and Guarantee Requirement to be satisfied with respect to such Subsidiary and with respect to any Equity Interest in or Indebtedness of such Subsidiary owned by or on behalf of any Loan Party, subject to the penultimate paragraph of this Section 9.10. Notwithstanding anything to the contrary herein, (x) except with respect to clause (y) below, in no circumstance shall an Excluded Subsidiary become a Guarantor unless designated as a Guarantor by the Lead Borrower in its sole discretion, (y) no Foreign Subsidiary other than a Foreign Subsidiary organized or incorporated in a Specified Jurisdiction shall become a Guarantor unless the Administrative Agent shall have consented in writing (such consent shall be in the sole discretion of the Administrative Agent) and (z) no Subsidiary shall be formed or organized without the written consent of the Administrative Agent (not to be unreasonably withheld, conditioned or delayed).

(e) Furnish to the Collateral Agent prompt written notice of any change (A) in any Loan Party's corporate, registered or organization name, (B) in any Loan Party's identity or type of legal entity, (C) in any Loan Party's organizational identification or registered number (to the extent relevant in the applicable jurisdiction of organization or incorporation) and (D) in any Loan Party's jurisdiction of organization or incorporation; provided that the Loan Parties shall not effect or permit any such change

unless all filings have been made, or will have been made within ten (10) days following such change (or such longer period as the Collateral Agent may agree in its sole discretion), under the Uniform Commercial Code (or its equivalent in any applicable jurisdiction) that are required in order for the Collateral Agent to continue at all times following such change to have a valid, legal and perfected security interest in all the Collateral in which a security interest may be perfected by such filing, for the benefit of the Secured Parties.

Notwithstanding anything to the contrary in this Agreement or in the other Loan Documents, the Collateral and Guarantee Requirement and the other provisions of this Section 9.10 and the other Loan Documents with respect to Collateral need not be satisfied with respect to any of the following (collectively, the "Excluded Property"):

(i) any Real Property other than Material Real Property;

(ii) motor vehicles and other assets subject to certificates of title (other than to the extent that a security interest therein can be perfected automatically or by the filing of a financing statement under the Uniform Commercial Code or applicable filings under Specified Foreign Law or is perfected without any action under Specified Foreign Law);

(iii) letter of credit rights (other than to the extent that a security interest therein can be perfected automatically or by the filing of a financing statement under the Uniform Commercial Code or applicable filings under Specified Foreign Law or is perfected without any action under Specified Foreign Law);

(iv) commercial tort claims with an expected value of less than $5,000,000 (other than to the extent that a security interest therein can be perfected automatically or by the filing of a financing statement under the Uniform Commercial Code or applicable filings under Specified Foreign Law or is perfected without any filing under Specified Foreign Law), as determined by the Lead Borrower in good faith;

(v) [reserved];

(vi) leases, licenses, permits and other agreements permitted under this Agreement, in each case, to the extent, and so long as, the pledge thereof as Collateral would violate or invalidate such lease, license, permit or agreement or create a right of termination in favor of any other party thereto (other than the Borrowers or a Guarantor), but only to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the Uniform Commercial Code, Specified Foreign Law, the Bankruptcy Code or other Requirement of Law and other than the proceeds thereof the assignment of which is expressly deemed effective under the Uniform Commercial Code, Specified Foreign Law or other applicable law;

(vii) other assets to the extent the pledge thereof or the security interest therein is prohibited by applicable law, rule or regulation (other than to the extent such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the Uniform Commercial Code, Specified Foreign Law of the applicable jurisdiction, Bankruptcy Code or any other Requirement of Law and other than the proceeds thereof the assignment of which is expressly deemed effective under the Uniform Commercial Code, Specified Foreign Law or other applicable law) or requires governmental (including regulatory) consent, approval, license or authorization or third party consent binding on any asset on the DIP Closing Date or at the time of their acquisition, as applicable, to be pledged (unless such consent, approval, license or authorization has been received);

(viii) those assets as to which the Administrative Agent and the Borrowers shall reasonably agree that the costs or other adverse consequences (including, without limitations, Tax consequences) of obtaining such security interest or perfection thereof are likely to be excessive in relation to the value of the security to be afforded thereby; provided that, with respect to any assets in existence or pledged as of the DIP Closing Date, the term "cost or other consequences" shall not include any Tax consequences under Code Section 956;

(ix) "intent-to-use" Trademark applications prior to the filing of a "Statement of Use" or "Amendment to Allege Use" with respect thereto, to the extent that the grant of a security interest therein would impair the validity or enforceability of, or render void or voidable or result in the cancellation of the applicable grantor's right, title or interest therein or in any Trademark registration issued as a result of such application under applicable law;

(x) any governmental licenses, permits or state or local franchises, charters and authorizations, to the extent Liens and security interests therein are prohibited or restricted thereby, but only to the extent, and for so long as, such prohibition is not terminated or rendered unenforceable or otherwise deemed ineffective by the Uniform Commercial Code or Specified Foreign Law, as applicable (other than the proceeds thereof the assignment of which is expressly deemed effective under the Uniform Commercial Code or Specified Foreign Law, as applicable);

(xi) cash, cash equivalents and/or securities held by a trustee or other escrow agent under any indenture or other debt agreement pursuant to customary discharge, redemption or defeasance provisions; provided that the related discharge, redemption and/or defeasance does not conflict with this Agreement;

(xii) Excluded Securities; and

(xiii) Excluded Accounts;

provided that (x) the Lead Borrower may in its sole discretion elect to exclude any property from the definition of "Excluded Property", (y) in no event shall any asset included in any Borrowing Base constitute Excluded Property and (z) none of the categories of assets set forth above will constitute Excluded Property with respect to the Debtors if it is not excluded from the Liens granted under the DIP Orders.

Notwithstanding anything herein to the contrary, (A) the Collateral Agent may grant extensions of time or waiver or modification of requirement for the creation or perfection of security interests in or the obtaining of insurance (including title insurance) or surveys with respect to particular assets (including extensions beyond the DIP Closing Date for the perfection of security interests in the assets of the Loan Parties on such date) where it reasonably determines, in consultation with the Borrowers, that perfection or obtaining of such items cannot reasonably be accomplished without undue effort or expense or is otherwise impracticable by the time or times at and/or in the form or manner in which it would otherwise be required by this Agreement or the other Loan Documents, (B) Liens required to be granted from time to time pursuant to, or any other requirements of, the Collateral and Guarantee Requirement and the Security Documents shall be subject to exceptions and limitations set forth in the Security Documents and (C) to the extent any Mortgaged Property is located in a jurisdiction with mortgage recording or similar Tax, the amount secured by the Security Document with respect to such Mortgaged Property shall be limited to the Fair Market Value of such Mortgaged Property as determined in good faith by the Lead Borrower (subject to such lesser amount agreed to by the Collateral Agent).

Section 9.11 [Reserved].

Section 9.12 Post-Closing. Take all necessary actions to satisfy the items described on Schedule 9.12 (as may be updated pursuant to Section 13.12 of this Agreement) within the applicable period of time specified in such Schedule (or such longer period as the Administrative Agent may agree in its sole discretion).

Section 9.13 Lender Calls. The Lead Borrower shall conduct, every other week, a conference call that the Lenders may attend to discuss the financial condition and results of operations of the Lead Borrower and its Subsidiaries and any other information or items that the Lenders reasonably request, each at a date and time to be determined by the Administrative Agent in consultation with the Lead Borrower.

Section 9.14 Qualified Sale. Use its commercially reasonable efforts to obtain Bankruptcy Court approval and confirmation of a Qualified Sale and the consummation of the transactions therein.

Section 9.15 Centre of Main Interests. Each Loan Party that is incorporated in a jurisdiction to which the Regulation applies shall maintain its "centre of main interests" in its jurisdiction of incorporation for the purposes of the Regulation.

Section 9.16 [reserved].

Section 9.17 [reserved].

Section 9.18 Collateral Monitoring and Reporting.

(a) Borrowing Base Certificates. By the 20th day of each month after the DIP Closing Date (or, in each case, if such date is not a Business Day, the following Business Day), the Lead Borrower shall deliver to the Administrative Agent (and the Administrative Agent shall promptly deliver same to the Revolving Lenders) a Borrowing Base Certificate prepared as of the close of business on the last Business Day of the previous month (provided that during the continuance of a Weekly Monitoring Period the Lead Borrower shall deliver to the Administrative Agent weekly Borrowing Base Certificates by Thursday (or if such date is not a Business Day, the following Business Day) of every week prepared as of the close of business on Friday of the previous week, which weekly Borrowing Base Certificates shall be in standard form unless otherwise reasonably agreed to by the Administrative Agent), or more frequently if elected by the Lead Borrower, provided that the Aggregate Borrowing Base shall continue to be reported on a more frequent basis for at least three (3) months following such election; provided further that (i) amounts of Equipment, Inventory, Real Property and Trademarks shown in the Borrowing Base Certificates delivered on a weekly basis will be based on the amount of Equipment, Inventory, Real Property or Trademarks, as applicable, (a) set forth in the most recent weekly report, where possible, and (b) for the most recently ended month for which such information is available with regard to locations where it is impracticable to report Equipment, Inventory, Real Property or Trademarks, as applicable, more frequently, and (ii) the amount of Eligible Accounts shown in such Borrowing Base Certificate will be based on the amount of the gross Accounts set forth in the most recent weekly report, less the amount of ineligible Accounts reported for the most recently ended month. In addition, an updated Borrowing Base Certificate will be delivered in connection with any Notice of Borrowing delivered following the transfer of any assets pursuant to Section 10.05(c) between the Loan Parties if such transferred assets would need to be included in the applicable Borrowing Base in order to meet the Availability Conditions. All calculations of Aggregate Availability in any Borrowing Base Certificate shall be made by the Lead Borrower and certified by a Responsible Officer, provided that the Administrative Agent may from time to time review and adjust any such calculation in consultation with the Lead Borrower to the extent the calculation is not made in accordance with this Agreement or does not accurately reflect the Reserves.

(b) Records and Schedules of Accounts. The Lead Borrower shall keep materially accurate and complete records of all Accounts, including all payments and collections thereon, and shall submit to the Administrative Agent, upon the Administrative Agent's request, sales, collection, reconciliation and other reports in form reasonably satisfactory to the Administrative Agent on a periodic basis (but not more frequently than at the time of delivery of each of the Financial Statements). The Lead Borrower shall also provide to the Administrative Agent, upon the Administrative Agent's reasonable advance request, on or before the 20th day of any calendar month as to which the Administrative Agent has made such a reasonable advance request, a detailed aged trial balance of all Accounts as of the end of the preceding month, specifying each Account's Account Debtor name and the amount, invoice date and due date as the Administrative Agent may reasonably request. If Accounts owing from any single Account Debtor in an aggregate face amount of $5,000,000 or more cease to be Eligible Accounts, the Borrowers shall notify the Administrative Agent of such occurrence promptly (and in any event within three (3) Business Days) after any Responsible Officer of the Lead Borrower has actual knowledge thereof.

(c) Maintenance of Dominion Account by U.S. Loan Parties. With respect to each U.S. Loan Party's Deposit Accounts (other than Excluded Accounts) and Dominion Accounts, as at the DIP Closing Date or, if opened following the DIP Closing Date, within fourteen (14) days (or such later date as the Administrative Agent may agree in its reasonable discretion), of the opening of such Deposit Account or the date any Person that owns such Deposit Account becomes a U.S. Loan Party hereunder, (i) each U.S. Loan Party shall obtain from each bank or other depository institution that maintains such Deposit Account, a Deposit Account Control Agreement, in form reasonably satisfactory to the Administrative Agent that provides for such bank or other depository institution, from and after the DIP Closing Date until the end of the Interim Period and otherwise, in the case of any Liquidity Period other than the Interim Period, following receipt by it of a Liquidity Notice (it being understood that the Administrative Agent shall reasonably promptly deliver a copy of such Liquidity Notice to the Lead Borrower), to transfer to a Dominion Account (or another account as the Administrative Agent or the Collateral Agent may direct (each acting in its sole discretion)), on a daily basis (or such other timing as the Administrative Agent or the Collateral Agent may direct (each acting in its sole discretion)), all balances in such Deposit Account (net of such minimum balance required by the bank at which such Deposit Account is maintained) for application to the Obligations then outstanding (the "U.S. Sweep") provided that, following the termination of the Liquidity Period, the Administrative Agent shall promptly instruct such bank or other depository institution to terminate the U.S. Sweep; (ii) the Lead Borrower shall establish the Dominion Account and obtain a Deposit Account Control Agreement in form reasonably satisfactory to the Administrative Agent, from the applicable Dominion Account bank, establishing the Administrative Agent's control over such Dominion Account, (iii) each U.S. Loan Party irrevocably appoints the Administrative Agent as such U.S. Loan Party's attorney-in-fact to collect such balances during a Liquidity Period to the extent any such delivery is not so made and (iv) each U.S. Loan Party shall instruct each Account Debtor to make all payments with respect to Collateral into Deposit Accounts subject to Deposit Account Control Agreements, and if deposited in violation of such instructions, the U.S. Loan Parties shall promptly (and in any event within seven (7) days) direct any such payments into Deposit Accounts subject to Deposit Account Control Agreements (it being understood that it shall not be a Default or Event of Default if any such payments are deposited in an Excluded Account pursuant to clause (v) of the definition thereof); and it is expressly acknowledged that the Administrative Agent reserves the right to impose Reserves with respect to the failure to obtain any such Deposit Account Control Agreement within such fourteen (14) day period. The provisions of this Section 9.18(c) do not apply to Excluded Accounts. Notwithstanding anything to the contrary in any Loan Document, (A) each U.S. Loan Party acknowledges and agrees that, from the commencement and during the continuation of a Liquidity Period, each of the Administrative Agent and the Collateral Agent is authorized and permitted to send to the applicable bank or other depository institution a notice of exclusive control, a trigger notice, a control notice, an access termination notice, a shifting control notice or any similar notice contemplated by any Deposit Account Control Agreement in

order to give effect to the U.S. Sweep and (B) the U.S. Sweep shall be applied in accordance with Section 11.02(b).

(d) [reserved.]

(e) Foreign Deposit Accounts. Each Foreign Loan Party shall, with respect to its Deposit Accounts into which proceeds of the Accounts of such Foreign Loan Party ("Collections") are paid or any master account to which any such Accounts are swept (each such Deposit Account being a "Collection Account"), (i) ensure that it is subject to a valid and enforceable first ranking security interest (subject to any Liens permitted under Section 10.02(d) or (n)(i) of this Agreement, solely to the extent such Liens arise by operation of law and either (x) such Liens are permitted by the related Deposit Account Control Agreement or (y) the Administrative Agent has established a Reserve in its Permitted Discretion for liabilities secured by such Liens) under the laws of the jurisdiction where the relevant Collection Account is located and (ii) as of the DIP Closing Date or, if opened following the DIP Closing Date, within fourteen (14) days (or such later date as the Administrative Agent may agree in its reasonable discretion), of the opening of such Collection Account or the date any Person that owns such Collection Account becomes a Foreign Loan Party hereunder take all actions necessary to obtain a Deposit Account Control Agreement, in form reasonably satisfactory to the Administrative Agent, that provides for such bank or other depository institution, from and after the DIP Closing Date until the end of the Interim Period and otherwise, in the case of any Liquidity Period other than the Interim Period, following receipt by it of a Liquidity Notice (it being understood that the Administrative Agent shall reasonably promptly deliver a copy of such Liquidity Notice to the Lead Borrower) to transfer to the Administrative Agent, at such times and in such amounts and currencies as prescribed by the Administrative Agent or the Collateral Agent (each acting in its sole discretion), all or any balance in such Collection Account (net of such minimum balance required by the bank at which such Collection Account is maintained) for application to the Obligations then outstanding (the "Foreign Sweep") provided that, following the termination of the Liquidity Period, the Administrative Agent shall promptly instruct such bank or other depository institution to terminate the Foreign Sweep. It is expressly acknowledged that the Administrative Agent reserves the right to impose Reserves with respect to the failure to obtain any such Deposit Account Control Agreement within such fourteen (14) day period. The provisions of this Section 9.18(e) do not apply to Excluded Accounts. Notwithstanding anything to the contrary in any Loan Document, (A) each Foreign Loan Party acknowledges and agrees, from the commencement and during the continuation of a Liquidity Period, that each of the Administrative Agent and the Collateral Agent is authorized and permitted to send to the applicable bank or other depository institution a notice of exclusive control, a trigger notice, a control notice, an access termination notice, a shifting control notice or any similar notice contemplated by any Deposit Account Control Agreement in order to give effect to the Foreign Sweep and (B) the Foreign Sweep shall be applied in accordance with Section 11.02(c).

(f) Deposit Account Operations.

(i) Schedule 9.18 sets forth all Deposit Accounts (other than Excluded Accounts or accounts not required to be subject to a Deposit Account Control Agreement pursuant to Section 9.18(e)) maintained by the Loan Parties, including the Dominion Accounts, as of the DIP Closing Date. The Lead Borrower shall promptly notify the Administrative Agent of any opening or closing of a Deposit Account (other than any Excluded Accounts) by the Lead Borrower or any other Loan Party, and shall not open, and shall ensure that no other Loan Parties open, any Deposit Accounts (other than any Excluded Accounts) at a bank not reasonably acceptable to the Administrative Agent.

(ii) If any Loan Party receives cash or any check, draft or other item of payment payable to such Loan Party with respect to any Collateral, it shall hold the same in trust for the

Collateral Agent and promptly (and in any event within seven (7) days) deposit the same into any Deposit Account that is subject to a Deposit Account Control Agreement or a Dominion Account.

(iii) Each Foreign Loan Party agrees that, from the commencement and during the continuation of a Liquidity Period, the only way in which monies may be withdrawn from any Deposit Account with respect to which Deposit Account Control Agreements have been entered into is (i) by (or on the authorization or instruction of) the Collateral Agent (or the Administrative Agent) in order to apply them in accordance with Section 11.02(c) or (ii) at the sole discretion of, and through the express authorization or instruction by, the Collateral Agent (or the Administrative Agent). To the extent that any Deposit Account Control Agreement (including an Australian Account Control Deed) allows a Deposit Account to be operated in a manner that is not consistent with this clause, then on request by the Collateral Agent or Australian Security Trustee, the Foreign Credit Party who holds that Deposit Account will promptly enter into such documentation as is required by the Collateral Agent or Australian Security Trustee to ensure that the Deposit Account Control Agreement is consistent with this Section 9.18(f)(iii).

(iv) The Collateral Agent shall be given sufficient access to each relevant Deposit Account (including each Collection Account) to ensure that the provisions of Section 11.02(c) are capable of being complied with including, without limitation, by having entered into a Deposit Account Control Agreement or other equivalent agreement with the account bank holding the relevant Deposit Account requiring such account bank to follow the instructions of the Administrative Agent and/or the Collateral Agent if instructions are given by it.

(v) Each Foreign Loan Party shall instruct each Account Debtor to pay all Collections into segregated Collection Accounts, which only contain Collections and are not used for any other purpose and which are subject to a Deposit Account Control Agreement as specified in clause (e) above (and if deposited in violation of such instructions, each Foreign Loan Party shall promptly (and in any event within seven (7) days) direct any such payments into such Collection Accounts).

(g) Transfer of Accounts; Notification of Account Debtors.

(i) At any time at the request of the Administrative Agent in its sole discretion from the commencement and during the continuation of a Liquidity Period, the Foreign Loan Parties shall (a) at the discretion of the Administrative Agent, either (i) immediately cause all of their Deposit Accounts into which the proceeds of Accounts are being paid (each, an "Existing Collection Account") to be transferred to the name of the Administrative Agent or (ii) promptly open new Deposit Accounts with (and, at the discretion of the Administrative Agent, in the name of) the Administrative Agent or an Affiliate of the Administrative Agent (such new bank accounts being Deposit Accounts under and for the purposes of this Agreement), and (b) if new Deposit Accounts have been established pursuant to this Section (each, a "New Collection Account") ensure that all Account Debtors are instructed to pay the Collections owing to such Loan Parties to the New Collection Accounts. Until all Collections have been redirected to the New Collection Accounts, each such Loan Party shall cause all amounts on deposit in any Existing Collection Account to be transferred to a New Collection Account at the end of each Business Day, provided that, if any such Loan Party does not instruct such re-direction or transfer, each of them hereby authorizes the Administrative Agent to give such instructions on their behalf to the applicable Account Debtors and/or the account bank holding such Existing Collection Account (as applicable).

(ii) At any time at the request of the Administrative Agent in its sole discretion, from the commencement and during the continuation of a Liquidity Period, each Foreign Loan Party agrees that if any of its Account Debtors have not previously received notice of the security interest

of the Collateral Agent over the Accounts and the Collections, it shall give notice to such Account Debtors and if any such Loan Party does not serve such notice, each of them hereby authorizes the Administrative Agent or the Collateral Agent to serve such notice on their behalf.

Section 9.19 Financial Assistance. Each Loan Party and its Subsidiaries shall comply in all respects with applicable legislation governing financial assistance and/or capital maintenance, to the extent such legislation is applicable to such Loan Party or such Subsidiary, including in relation to the execution of the Security Documents by such Loan Party and payments of amounts due under this Agreement.

Section 9.20 Foreign Collateral. Each Foreign Loan Party shall ensure that (i) its standard terms and conditions of purchase at all times contain a condition to the effect that title to the purchased goods transfers to such Loan Party at a time no later than on delivery of the purchased goods to such Loan Party and that, pursuant to such standard terms and conditions of purchase, there are no extendible retention of title rights in favor of its suppliers; provided, however, that retention of title rights may be imposed in the ordinary course of buying and using and/or selling current assets, (ii) its standard terms and conditions of purchase are not amended in a manner that would prejudice the interest of the Lenders without the prior consent in writing of the Administrative Agent, and (iii) if the reference on any purchase order or equivalent document is to the standard terms and conditions of purchase as set out on a specified website, the relevant website must be maintained, up to date and publicly accessible at all times. During any Liquidity Period or at any other time at which the Administrative Agent in its Permitted Discretion determines that the Collateral of any Foreign Loan Party may be at substantial risk of loss of title, at the request of the Administrative Agent, the specified Loan Party must send a copy of its standard terms and conditions of purchase (or other notice satisfactory to the Administrative Agent which rejects retention of title and/or extendible retention of title provisions in relation to the Loan Party's Equipment, Inventory, Real Property or Trademarks (other than retention of title rights imposed in the ordinary course of buying and using and/or selling current assets)) to its suppliers.

Section 9.21 Australian PPSA Undertaking.

(a) If a Loan Party holds any security interests for the purposes of the Australian PPSA and if failure by the Loan Party to perfect such security interests would materially adversely affect its business, the Loan Party agrees to implement, maintain and comply in all material respects with, procedures for the perfection of those security interests. These procedures must include procedures designed to ensure that the Loan Party takes all reasonable steps under the Australian PPSA to continuously perfect any such security interest including all steps reasonably necessary:

(i) for the Loan Party to obtain, the highest ranking priority possible in respect of the security interest (such as perfecting a purchase money security interest or perfecting a security interest by control); and

(ii) to reduce as far as possible the risk of a third party acquiring an interest free of the security interest (such as including the serial number in a financing statement for personal property that may or must be described by a serial number).

(b) Everything a Loan Party is required to do under this Section 9.21 is at the Loan Party's expense. Each Loan Party agrees to pay or reimburse the costs (including in connection with advisers) of the Loan Parties in connection with anything the Loan Party is required to do under this clause.

Section 9.22 Australian Tax Consolidation. Each Australian Loan Party is a member of an Australian Tax Consolidated Group for which the Head Company (as defined in the Income Tax Assessment Act 1997) is Briggs & Stratton Australia Pty. Limited.

Section 9.23 Compliance with the Swiss Non-Bank Rules.

(a) Each Swiss Loan Party shall comply with the Swiss Non-Bank Rules, to the extent applicable; provided, however, that a Swiss Loan Party shall not be in breach of this covenant if non-compliance arises solely by reason of:

(i) a failure by one or more Lenders or Participants to comply with their obligations under Section 13.04;

(ii) a confirmation made by one or more Lenders or Participants to be one single Swiss Non-Qualifying Lender is incorrect;

(iii) one or more Lenders or Participants ceasing to be a Swiss Qualifying Lender (to the extent such Lender or Participant confirmed to be a Swiss Qualifying Lender) as a result of any reason attributable to such Lender or Participant;

(iv) an assignment or participation of any Loan under this Agreement to a Swiss Non-Qualifying Lender after the occurrence and during the continuance of an Event of Default; or

(v) an inaccurate representation or warranty by a Lender pursuant to Section 13.27.

(b) For the purposes of this Section 9.23, each Swiss Loan Party shall assume that, for the purpose of determining compliance with the Swiss Twenty Non-Bank Rule, the aggregate number of Lenders and Participants under this Agreement which are Swiss Non-Qualifying Lenders is ten (10).

Section 9.24 Milestones. Ensure the timely compliance with the following milestones relating to the Chapter 11 Cases in accordance with the applicable timing referred to below (or such later dates as approved by (x) in the case of any extension that is less than or equal to five days after each time period referred to below, the Administrative Agent or (y) in the case of any extension that is in excess of five days after each time period referred to below, the Administrative Agent and the Required Lenders) (collectively, the "Milestones" and individually a "Milestone"):

(a) within five (5) days following the Petition Date, entry by the Bankruptcy Court of the Interim Order;

(b) no later than August 25, 2020, entry by the Bankruptcy Court of the Bidding Procedures Order;

(c) within forty (40) days following the entry by the Bankruptcy Court of the Interim Order, entry by the Bankruptcy Court of the Final Order (the "Final Order Deadline");

(d) no later than September 15, 2020, commencement of an auction (unless no other bidder submitted a qualified bid with respect to a Qualified Sale in accordance with the Bidding Procedures Order);

(e) no later than September 25, 2020, entry by the Bankruptcy Court of the Qualified Sale Order; and

(f) no later than November 19, 2020 (or if the closing of the Qualified Sale shall not have occurred due to the failure of the conditions to closing set forth in Section 7.1(f) and Section 7.2(d) of the Stalking Horse APA remain unsatisfied or not waived and if all other conditions to the respective obligations of the parties to the Stalking Horse APA to close thereunder that are capable of being fulfilled

by such date shall have been so fulfilled or waived, then no later than December 31, 2020), consummation of a Qualified Sale.

Section 9.25 Priority and Liens. Each Debtor hereby covenants, represents and warrants that upon the entry of each DIP Order, the Obligations of such Debtor hereunder and under the Loan Documents shall have the priority provided to them in accordance with the DIP Orders.

Section 9.26 DIP Budget Covenants.

(a) Each Loan Party shall, and cause its Subsidiaries to, comply with the DIP ABL Budget Covenant.

(b) Each Loan Party shall, and cause its Subsidiaries to, comply with the DIP Term Budget Covenant.

ARTICLE 10 NEGATIVE COVENANTS

The Borrowers covenant and agree with each Lender, each Issuing Bank and the Swingline Lender that from the DIP Closing Date until the Termination Date, unless the Required Lenders shall otherwise consent in writing, the Lead Borrower and the other Borrowers will not, and will not permit any of the Subsidiaries to:

Section 10.01 Indebtedness. Incur, create, assume or permit to exist any Indebtedness, except:

(a) Indebtedness outstanding on the DIP Closing Date (provided that any Indebtedness incurred pursuant to this clause (a) shall be set forth on Schedule 10.01); provided that any Indebtedness outstanding pursuant to this clause (a) which is owed by a Loan Party to any Subsidiary that is not a Loan Party shall be subordinated in right of payment to the Loan Obligations under this Agreement on customary terms;

(b) Indebtedness created hereunder and under the other Loan Documents;

(c) Indebtedness of the Lead Borrower or any Subsidiary pursuant to Hedging Agreements entered into for non-speculative purposes;

(d) Indebtedness (including obligations in respect of letters of credit, bank guarantees or similar instruments for the benefit of any person providing such Indebtedness) in respect of workers' compensation claims, health, disability or other employee benefits or property, casualty, liability or self-insurance obligations, supply chain financing transactions, trade contracts, bankers' acceptances, guarantees, performance, tender, bid, stay, surety, statutory, judgment, appeal, advance payment, completion, export or import, indemnities, customs, value added or similar tax or other guarantees and warranties, revenue bonds or similar instruments, in each case in the ordinary course of business and consistent with past practice or industry practices, including those incurred to secure health, safety and environmental obligations;

(e) Indebtedness of the Lead Borrower to any Subsidiary and of any Subsidiary to the Lead Borrower or any other Subsidiary; provided that (i) Indebtedness of any Subsidiary that is not a Debtor owing to a Debtor incurred pursuant to this Section 10.01(e) shall be subject to Section 10.04, (ii) Indebtedness of any Subsidiary that is neither a Debtor or a Loan Party owing to a Loan Party incurred pursuant to this Section 10.01(e) shall be subject to Section 10.04, (iii) Indebtedness owed by any Debtor to any Subsidiary that is not a Debtor incurred pursuant to this Section 10.01(e) shall be subordinated in right of payment to the Loan Obligations under this Agreement on customary terms and (iv) Indebtedness

owed by any Loan Party that is not a Debtor (a "Non-Debtor Loan Party") to any Subsidiary that is not a Debtor or a Loan Party incurred pursuant to this Section 10.01(e) shall be subordinated in right of payment to the Loan Obligations under this Agreement on customary terms;

(f) Indebtedness in connection with floor plan and other finance programs provided for the benefit of customers, dealers and/or distributors of the Lead Borrower and/or its Subsidiaries in the ordinary course of business in an aggregate amount not to exceed $5,000,000 at any time outstanding;

(g) Indebtedness arising in connection with endorsement of instruments for collection or deposit, from the honoring by a bank or other financial institution of a check, draft or similar instrument drawn against insufficient funds or other cash management services in the ordinary course of business;

(h) [reserved];

(i) Capitalized Lease Obligations, mortgage financings, purchase money obligations (including Indebtedness as lessee or guarantor) and other Indebtedness (including, for the avoidance of doubt, any Indebtedness in connection with sale leaseback transactions) in each case, incurred for the purpose of financing all or any part of the acquisition, lease or cost of design, construction, repair, replacement, installation or improvement of the respective property (real or personal, and whether through the direct purchase of property or the Equity Interest of any person owning such property), in an aggregate principal amount that immediately after giving effect to the incurrence of such Indebtedness and the use of proceeds thereof, together with the aggregate principal amount of any other Indebtedness outstanding pursuant to this Section 10.01(i), would not exceed $500,000 when incurred, created or assumed;

(j) [reserved];

(k) [reserved];

(l) [reserved];

(m) Guarantees:

(i) by any Debtor of any Indebtedness of any Debtor permitted to be incurred under this Agreement or any DIP Order,

(ii) by any Non-Debtor Loan Party of any Indebtedness of any Non-Debtor Loan Party permitted to be incurred under this Agreement,

(iii) by any Debtor of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Debtor to the extent such Guarantees are permitted by Section 10.04,

(iv) by any Non-Debtor Loan Party of Indebtedness otherwise permitted hereunder of any Subsidiary that is not a Non-Debtor Loan Party to the extent such Guarantees are permitted by Section 10.04,

(v) by any Subsidiary that is not a Loan Party of Indebtedness of another Subsidiary that is not a Loan Party, and

(vi) by any Debtor of Indebtedness of Subsidiaries that are not Debtors incurred for working capital purposes in the ordinary course of business on ordinary business terms to the extent such Guarantees are permitted by Section 10.04; provided that Guarantees by any Debtor under

this Section 10.01(m) of any other Indebtedness of a person that is subordinated in right of payment to other Indebtedness of such person shall be expressly subordinated in right of payment to the Loan Obligations to at least the same extent as such underlying Indebtedness is subordinated in right of payment

(vii) by any Non-Debtor Loan Party of Indebtedness of Subsidiaries that are neither Debtors nor Loan Parties incurred for working capital purposes in the ordinary course of business on ordinary business terms to the extent such Guarantees are permitted by Section 10.04; provided that Guarantees by any Non-Debtor Loan Party under this Section 10.01(m) of any other Indebtedness of a person that is subordinated in right of payment to other Indebtedness of such person shall be expressly subordinated in right of payment to the Loan Obligations to at least the same extent as such underlying Indebtedness is subordinated in right of payment;

(n) [reserved];

(o) Indebtedness in respect of letters of credit (including standby and commercial), banker's acceptances, bank guarantees, shipside bonds, surety bonds, performance bonds, warehouse receipts or similar instruments issued in the ordinary course of business and consistent with past practice or industry practices that (i) do not support obligations in respect of Indebtedness for borrowed money and/or (ii) remain contingent;

(p) [reserved];

(q) [reserved];

(r) Indebtedness incurred in the ordinary course of business in respect of obligations of the Lead Borrower or any Subsidiary to pay the deferred purchase price of goods or services or progress payments in connection with such goods and services; provided that such obligations are incurred in connection with open accounts extended by suppliers on customary trade terms in the ordinary course of business and not in connection with the borrowing of money or any Hedging Agreements;

(s) Indebtedness representing deferred compensation to employees, consultants or independent contractors of the Lead Borrower or any Subsidiary incurred in the ordinary course of business;

(t) [reserved];

(u) obligations in respect of Bank Product Debt;

(v) [reserved];

(w) [reserved];

(x) Indebtedness issued by the Lead Borrower or any Subsidiary to current or former officers, directors and employees, their respective permitted transferees, assigns, estates, spouses or former spouses to finance the purchase or redemption of Equity Interests of the Lead Borrower permitted by Section 10.06;

(y) [reserved];

(z) Indebtedness of the Lead Borrower or any Subsidiary to or on behalf of any joint venture (regardless of the form of legal entity) that is not a Subsidiary arising in the ordinary course of business in

connection with the cash management operations (including with respect to intercompany self-insurance arrangements) of the Lead Borrower and the Subsidiaries;

(aa) [reserved];

(bb) Indebtedness consisting of (i) obligations to pay, or the financing of, insurance premiums or (ii) take-or-pay obligations contained in supply arrangements, in each case, in the ordinary course of business; and

(cc) Indebtedness related to unfunded pension fund and other employee benefit plan obligations and liabilities to the extent they are permitted to remain unfunded under applicable law.

For purposes of determining compliance with this Section 10.01 or Section 10.02, if Indebtedness is incurred to refinance other Indebtedness denominated in a currency other than U.S. Dollars (or in a different currency from the Indebtedness being refinanced), and such refinancing would cause the applicable Dollar-denominated restriction to be exceeded if calculated at the relevant currency exchange rate in effect on the date of such refinancing, such Dollar-denominated restriction shall be deemed not to have been exceeded so long as the principal amount of such refinancing Indebtedness does not exceed (i) the outstanding or committed principal amount, as applicable, of such Indebtedness being refinanced *plus* (ii) the aggregate amount of fees, underwriting discounts, premiums (including tender premiums), defeasance costs and other costs and expenses incurred in connection with such refinancing.

Further, for purposes of determining compliance with this Section 10.01, (A) Indebtedness need not be permitted solely by reference to one category of permitted Indebtedness (or any portion thereof) described in Sections 10.01(a) through (cc) but may be permitted in part under any relevant combination thereof (and subject to compliance, where relevant, with Section 10.02) and (B) in the event that an item of Indebtedness (or any portion thereof) meets the criteria of one or more of the categories of permitted Indebtedness (or any portion thereof) described in Sections 10.01(a) through (cc), the Lead Borrower may, in its sole discretion, classify or divide such item of Indebtedness (or any portion thereof) in any manner that complies with this Section 10.01 and will be entitled to only include the amount and type of such item of Indebtedness (or any portion thereof) in one of the above clauses (or any portion thereof) and such item of Indebtedness (or any portion thereof) shall be treated as having been incurred or existing pursuant to only such clause or clauses (or any portion thereof); provided that all Indebtedness outstanding under this Agreement shall at all times be deemed to have been incurred pursuant to clause (b) of this Section 10.01.

For the avoidance of doubt, this Agreement will not treat (1) unsecured Indebtedness as subordinated or junior in right of payment to secured Indebtedness merely because it is unsecured or (2) senior Indebtedness as subordinated or junior in right of payment to any other senior Indebtedness merely because it has a junior priority with respect to the same collateral.

Section 10.02 Liens. Create, incur, assume or permit to exist any Lien on any property or assets (including stock or other securities of any person) of the Lead Borrower or any Subsidiary now owned or hereafter acquired by it or on any income or revenues or rights in respect of any thereof, except the following, all of which shall be, in the case of the Collateral of the Debtors, junior to the Liens on Collateral of the Debtors to the Liens securing the Obligations except to the extent otherwise expressly permitted in the Applicable DIP Order (collectively, "Permitted Liens"):

(a) Liens on property or assets (i) of the Lead Borrower and the Subsidiaries existing on the DIP Closing Date and set forth on Schedule 10.02(a), and any modifications, replacements, renewals or extensions of Liens permitted by this clause (a); provided that such Liens shall secure only those obligations that they secure on the DIP Closing Date and shall not subsequently apply to any other property or assets

of the Lead Borrower or any Subsidiary other than (A) after-acquired property that is affixed or incorporated into the property covered by such Lien and/or that otherwise constitutes after-acquired property that would be required to be subjected to such Lien pursuant to the collateral grant clause and/or other terms of such Indebtedness as in effect on the DIP Closing Date and (B) proceeds and products thereof to the extent permitted under the Bankruptcy Code and (ii) of the Lead Borrower associated with the project that is the subject of the NMTC Financing that from time to time secure the NMTC Financing;

(b) any Lien created under the Loan Documents (including Liens created under the Security Documents securing Secured Bank Product Obligations) and any Lien created or permitted under the Interim Order or the Final Order;

(c) [reserved];

(d) Liens for Taxes, assessments or other governmental charges, levies or claims not yet delinquent by more than thirty (30) days or that are being contested in good faith in compliance with Section 9.03;

(e) Liens imposed by law, constituting landlord's, carriers', warehousemen's, mechanics', materialmen's, workmen's, repairmen's, supplier's, construction or other like Liens, securing obligations that are not overdue by more than thirty (30) days or that are being contested in good faith by appropriate proceedings and in respect of which, if applicable, the Lead Borrower or any Subsidiary shall have set aside on its books reserves in accordance with GAAP;

(f) (i) pledges and deposits and other Liens made in the ordinary course of business in compliance with the Federal Employers Liability Act or any other workers' compensation, unemployment insurance and other social security laws or regulations and deposits securing liability to insurance carriers under insurance or self-insurance arrangements in respect of such obligations and (ii) pledges and deposits and other Liens securing liability for reimbursement or indemnification obligations of (including obligations in respect of letters of credit or bank guarantees for the benefit of) insurance carriers providing property, casualty or liability insurance to the Lead Borrower or any Subsidiary;

(g) pledges and deposits and other Liens to secure the performance of bids, trade contracts (other than for Indebtedness), leases (other than Capitalized Lease Obligations), statutory obligations, surety and appeal bonds, performance and return of money bonds, bids, leases, government contracts, agreements with utilities, and other obligations of a like nature (including letters of credit in lieu of any such bonds or to support the issuance thereof), in each case to the extent such deposits and other Liens are incurred in the ordinary course of business, including those incurred to secure health, safety and environmental obligations in the ordinary course of business;

(h) zoning, land use and building restrictions, regulations and ordinances, easements, survey exceptions, minor encroachments by and on the Real Property, railroad trackage rights, sidings and spur tracks, leases (other than Capitalized Lease Obligations), subleases, licenses, special assessments, rights-of-way, covenants, conditions, restrictions and declarations on or with respect to the use of Real Property, reservations, restrictions and leases of or with respect to oil, gas, mineral, riparian and water rights and water usage, servicing agreements, development agreements, site plan agreements and other similar encumbrances incurred in the ordinary course of business and title defects or irregularities that, in the aggregate, do not interfere in any material respect with the ordinary conduct of the business of the Lead Borrower or any Subsidiary (including, without limitation, all such matters shown on any Mortgage Policies in respect of any Mortgaged Property delivered to the Administrative Agent prior to the DIP Closing Date);

(i) Liens securing Indebtedness permitted by Section 10.01(i); provided that such Liens do not apply to any property or assets of the Lead Borrower or any Subsidiary other than the property or assets acquired, leased (including in connection with a sale leaseback transaction), constructed, replaced, repaired, improved with or financed by such Indebtedness, and accessions and additions thereto, proceeds and products thereof, customary security deposits and related property; provided further that individual financings provided by one lender may be cross-collateralized to other financings provided by such lender (and its Affiliates);

(j) [reserved];

(k) Liens arising out of (i) judgments, decrees, orders or awards not constituting an Event of Default under Section 11.01(k) or (ii) notices of *lis pendens* and associated rights related to litigation being contested in good faith by appropriate proceedings and for which adequate reserves have been made to the extent required by GAAP;

(l) any interest or title of a ground lessor or any other lessor, sublessor or licensor under any ground leases or any other leases, subleases or licenses entered into by the Lead Borrower or any Subsidiary in the ordinary course of business, and all Liens suffered or created by any such ground lessor or any other lessor, sublessor or licensor (or any predecessor in interest) with respect to any such interest or title in the real property which is subject thereof;

(m) Liens that are contractual rights of set-off (i) relating to the establishment of depository relations with banks and other financial institutions not given in connection with the issuance of Indebtedness, (ii) relating to pooled deposits, sweep accounts, reserve accounts or similar accounts of the Lead Borrower or any Subsidiary to permit satisfaction of overdraft or similar obligations incurred in the ordinary course of business of the Lead Borrower or any Subsidiary, including with respect to credit card charge-backs and similar obligations, or (iii) relating to purchase orders and other agreements entered into with customers, suppliers or service providers of the Lead Borrower or any Subsidiary in the ordinary course of business;

(n) Liens (i) that are banker's liens, rights of set-off or similar rights, (ii) attaching to commodity trading accounts or other commodity brokerage accounts incurred in the ordinary course of business, (iii) encumbering reasonable customary initial deposits and margin deposits and similar Liens attaching to commodity trading accounts or other brokerage accounts incurred in the ordinary course of business and not for speculative purposes, (iv) in respect of Third Party Funds or (v) in favor of credit card companies pursuant to agreements therewith;

(o) Cash deposits securing obligations in respect of letters of credit (including standby and commercial), banker's acceptances, bank guarantees, shipside bonds, surety bonds, performance bonds, warehouse receipts or similar instruments permitted under Section 10.01(d), (g) or (o) and incurred in the ordinary course of business and consistent with past practice or industry practices that (i) do not support obligations in respect of Indebtedness for borrowed money and/or (ii) remain contingent;

(p) leases or subleases, and licenses or sublicenses (including with respect to any Real Property, fixtures, furnishings, equipment, vehicles or other personal property, or Intellectual Property) and covenants not to sue of or under Intellectual Property or software or other technology, granted to others in the ordinary course of business or otherwise not interfering in any material respect with the business of the Lead Borrower and its Subsidiaries, taken as a whole;

(q) pledges and deposits and other Liens in favor of customs and revenue authorities to secure contested Taxes and payment of customs duties in connection with the importation of goods;

(r) Liens solely on any cash earnest money deposits made by the Lead Borrower or any of the Subsidiaries in connection with any letter of intent or purchase agreement in respect of any Investment permitted hereunder;

(s) [reserved];

(t) [reserved];

(u) [reserved];

(v) [reserved];

(w) Liens arising from precautionary Uniform Commercial Code financing statements (or other similar filings in other applicable jurisdictions) regarding operating leases or other obligations not constituting Indebtedness;

(x) Liens, encumbrances or restrictions (including, without limitation, put and call agreements) that existed on the DIP Closing Date (i) on Equity Interests in joint ventures that are not Subsidiaries (A) securing obligations of such joint venture or (B) pursuant to the relevant joint venture agreement or arrangement, (ii) [reserved] and (iii) constituting options, put and call arrangements, rights of first refusal and similar rights relating to investments in joint ventures, partnerships and other similar investments;

(y) Liens on securities that are the subject of repurchase agreements constituting Permitted Investments under clause (c) of the definition thereof;

(z) [reserved];

(aa) Liens securing insurance premiums financing arrangements; provided that such Liens are limited to the applicable unearned insurance premiums;

(bb) (i) any condemnation or eminent domain proceedings affecting any Real Property and (ii) in the case of Real Property in which a Loan Party has a leasehold interest or easement rights, any Lien, mortgage, security interest, restriction, encumbrance or any other matter of record to which the fee simple interest (or any superior leasehold interest) is subject;

(cc) Liens securing Indebtedness or other obligation (i) of the Debtors in favor of a Debtor (ii) of any Subsidiary that is a Non-Debtor Loan Party in favor of any Non-Debtor Loan Party and (iii) of any Subsidiary that is not a Guarantor in favor of any Subsidiary that is not a Guarantor;

(dd) Liens securing obligations under Hedging Agreements consisting of Liens on any margin or collateral posted by the Lead Borrower or any Subsidiary under a Hedging Agreement as a result of any regulatory requirement, swap clearing organization, or other similar regulations, rule, or requirement;

(ee) Liens on goods or inventory the purchase, shipment or storage price of which is financed by a documentary letter of credit or bank guarantee issued or created for the account of the Lead Borrower or any Subsidiary in the ordinary course of business; provided that such Lien secures only the obligations of the Lead Borrower or such Subsidiaries in respect of such letter of credit, bank guarantee or banker's acceptance to the extent permitted under Section 10.01;

(ff) subordination, non-disturbance and/or attornment agreements with any ground lessor, lessor or any mortgagor of any of the foregoing, with respect to any ground lease or other lease or sublease entered into by the Lead Borrower or any Subsidiary;

(gg) [reserved];

(hh) Liens arising out of conditional sale, title retention, hire purchase, consignment or similar arrangements for the sale or purchase of goods by the Lead Borrower or any of the Subsidiaries in the ordinary course of business;

(ii) with respect to any Real Property which is acquired in fee after the DIP Closing Date, Liens which exist immediately prior to the date of acquisition, excluding any Liens securing Indebtedness which is not otherwise permitted hereunder provided that (i) such Lien is not created in contemplation of or in connection with such acquisition and (ii) such Lien does not apply to any other property or assets of the Lead Borrower or any of its Subsidiaries;

(jj) [reserved];

(kk) [reserved];

(ll) [reserved];

(mm) [reserved];

(nn) Liens on assets pursuant to merger agreements, stock or asset purchase agreements and similar agreements in respect of the disposition of such assets otherwise permitted under this Agreement and the Applicable DIP Order for so long as such agreements are in effect; and

(oo) Liens that may arise on inventory or equipment in the ordinary course of business as a result of such inventory or equipment being located on premises owned by persons (including, without limitation, any client or supplier) other than the Lead Borrower or its Subsidiaries.

(pp) [reserved];

(qq) [reserved].

For purposes of determining compliance with this Section 10.02, (A) a Lien securing an item of Indebtedness need not be permitted solely by reference to one category of Permitted Liens (or any portion thereof) described in Sections 10.02(a) through (oo) but may be permitted in part under any combination thereof and (B) in the event that a Lien securing any obligation (or any portion thereof) meets the criteria of one or more of the categories of Permitted Liens (or any portion thereof) described in Sections 10.02(a) through (oo), the Lead Borrower may, in its sole discretion, classify or divide such Lien securing such obligation (or any portion thereof) in any manner that complies with this Section 10.02 and will be entitled to only include the amount and type of such Lien or such obligation secured by such Lien (or any portion thereof) in one of the above clauses and such Lien securing such obligation (or portion thereof) will be treated as being incurred or existing pursuant to only such clause or clauses (or any portion thereof); provided that all Liens securing Indebtedness under this Agreement shall at all times be deemed to have been incurred pursuant to clause (b) of this Section 10.02.

Section 10.03 Limitations on Certificate of Incorporation, By-Laws and Certain Other Agreements, Etc. Amend or modify, or permit the amendment or modification of (i) any provision of the

definitive documentation governing any Junior Financing (after the entering into thereof) or (ii) its certificate or articles of incorporation, certificate of formation, limited liability company or by-laws (or the equivalent organizational documents), in each case, in a manner that is materially adverse to the interests of the Lenders without the prior written consent of the Required Lenders.

Section 10.04 Investments, Loans and Advances. (i) Purchase or acquire (including pursuant to any merger or amalgamation with a person that is not a Wholly Owned Subsidiary immediately prior to such merger or amalgamation) any Equity Interests, evidences of Indebtedness or other securities of any other person, (ii) make any loans or advances to or Guarantees of the Indebtedness of any other person, or (iii) purchase or otherwise acquire, in one transaction or a series of related transactions, (x) all or substantially all of the property and assets or business of another person or (y) assets constituting a business unit, line of business or division of such person (each of the foregoing, an "Investment"), except:

(a) Guarantees permitted by Section 10.01;

(b) (i) Investments by any Debtor in any other Debtor;

(ii) Investments by any Non-Debtor Loan Party in any other Non-Debtor Loan Party;

(iii) Investments by any Subsidiary that is not a Loan Party in any Loan Party or any Subsidiary that is not a Loan Party; and

(iv) other intercompany liabilities amongst the Lead Borrower and its Subsidiaries (or solely amongst its Subsidiaries) in the ordinary course of business and consistent with past practices prior to the DIP Closing Date in connection with the cash management operations of the Lead Borrower and its Subsidiaries.

(c) Permitted Investments and Investments that were Permitted Investments when made;

(d) Investments arising out of the receipt by the Lead Borrower or any Subsidiary of non-cash consideration for the Disposition of assets permitted under Section 10.05;

(e) loans and advances to officers, directors, employees or consultants (i) in the ordinary course of business in an aggregate principal amount not to exceed $250,000 at any one time outstanding, (ii) in respect of payroll payments and expenses in the ordinary course of business and (iii) in connection with such person's purchase of Equity Interests of the Lead Borrower;

(f) accounts receivable, security deposits and prepayments arising and trade credit granted in the ordinary course of business and any assets or securities received in satisfaction or partial satisfaction thereof from financially troubled account debtors to the extent reasonably necessary in order to prevent or limit loss and any prepayments and other credits to suppliers made in the ordinary course of business;

(g) Hedging Agreements entered into for non-speculative purposes;

(h) Investments existing or committed, or anticipated to exist in the future, as of the DIP Closing Date, and set forth on Schedule 10.04, so long as the aggregate amount of all Investments pursuant to this clause (h) is not increased at any time above the amount of such Investment existing or committed on the DIP Closing Date (other than pursuant to an increase as required by the terms of any such Investment as in existence on the DIP Closing Date or as otherwise permitted by this Section 10.04);

(i) Investments resulting from pledges and deposits under Sections 10.02(f), (g), (n), (q), (r), (dd) and (ii);

(j) [reserved];

(k) [reserved];

(l) Investments received in connection with the bankruptcy or reorganization of, or settlement of delinquent accounts and disputes with or judgments against, customers and suppliers, in each case in the ordinary course of business or Investments acquired by the Lead Borrower or a Subsidiary as a result of a foreclosure by the Lead Borrower or any of the Subsidiaries with respect to any secured Investments or other transfer of title with respect to any secured Investment in default;

(m) [reserved];

(n) acquisitions by the Lead Borrower or any Subsidiary of obligations of one or more officers or other employees of the Lead Borrower or its Subsidiaries in connection with such officer's or employee's acquisition of Equity Interests of the Lead Borrower, so long as no cash is actually advanced by the Lead Borrower or any of the Subsidiaries to such officers or employees in connection with the acquisition of any such obligations;

(o) Guarantees by the Lead Borrower or any Subsidiary of operating leases (other than Capitalized Lease Obligations) or of other obligations that do not constitute Indebtedness of the kind described in clauses (b), (e), (f), (g), (h), (i), (j) or (k) of the definition thereof, in each case entered into by the Lead Borrower or any Subsidiary in the ordinary course of business;

(p) [reserved];

(q) Investments in the ordinary course of business and consistent with past practice consisting of Uniform Commercial Code Article 3 endorsements for collection or deposit and Uniform Commercial Code Article 4 customary trade arrangements with customers;

(r) loans and advances to future, present or former officers, directors, employees, members of management or consultants or their respective estates, spouses or former spouses in connection with such person's purchase or redemption of Equity Interests of the Lead Borrower, to the extent not prohibited by Section 10.06;

(s) advances in the form of deposits, prepayment of expenses and other credits made in the ordinary course of business;

(t) [reserved];

(u) [reserved];

(v) Investments consisting of the licensing, sublicensing or contribution of Intellectual Property pursuant to joint marketing or other similar arrangements with other persons in the ordinary course of business and consistent with past practices or industry practices;

(w) to the extent constituting Investments, purchases and acquisitions of Inventory, supplies, materials and Equipment or purchases of contract rights or licenses or leases of Intellectual Property, in each case in the ordinary course of business and in accordance with the Applicable DIP Order;

(x) [reserved];

(y) [reserved];

(z) [reserved];

(aa) [reserved];

(bb) [reserved];

(cc) [reserved];

(dd) guaranties, keepwells and similar arrangements made in the ordinary course of business of obligations owed to landlords, suppliers, customers, franchisees and licensees of the Lead Borrower or any Subsidiary and performance guarantees with respect to obligations that are permitted by this Agreement;

(ee) Investments consisting of earnest money deposits required in connection with a purchase agreement, or letter of intent, or other acquisitions to the extent not otherwise prohibited by this Agreement; and

(ff) contributions to a "rabbi" trust for the benefit of employees or other grantor trusts subject to claims of creditors in the case of bankruptcy of the Lead Borrower; and

(gg) any Investment acquired by virtue of any Bail-in Action with respect to any Lender (or any direct or indirect parent company thereof),

provided that, to the extent any Investment under this Section 10.04 constitutes an intercompany loan or other intercompany Indebtedness owing from a non-Debtor to a Debtor or a non-Loan Party to a Loan Party and, in each case with a value in excess of $250,000, such loan or other Indebtedness shall be documented by a promissory note and pledged to the Administrative Agent for the benefit of the Secured Parties in accordance with the applicable Security Documents.

For purposes of determining compliance with this Section 10.04, (A) an Investment need not be permitted solely by reference to one category of permitted Investments (or any portion thereof) described in Sections 10.04(a) through (gg) but may be permitted in part under any relevant combination thereof and (B) in the event that an Investment (or any portion thereof) meets the criteria of one or more of the categories of permitted Investments (or any portion thereof) described in Sections 10.04(a) through (gg), the Lead Borrower may, in its sole discretion, classify or divide such Investment (or any portion thereof) in any manner that complies with this Section 10.04 and will be entitled to only include the amount and type of such Investment (or any portion thereof) in one or more (as relevant) of the above clauses (or any portion thereof) and such Investment (or any portion thereof) shall be treated as having been made or existing pursuant to only such clause or clauses (or any portion thereof); provided that all Investments described in Schedule 10.04 shall be deemed outstanding under Section 10.04(b) or Section 10.04(h), as applicable.

The amount of any Investment made other than in the form of cash or Permitted Investments shall be the Fair Market Value thereof valued at the time of the making thereof (without giving effect to any subsequent increases or decreases (including, without limitation, write-downs or write-offs) thereof) less any amount realized in respect of such Investment upon the sale, collection or return of capital (not to exceed the original amount invested).

Section 10.05 Mergers, Consolidations, Sales of Assets and Acquisitions. Merge into, amalgamate with or consolidate with any other person, or permit any other person to merge into, amalgamate with or consolidate with it, or Dispose of (in one transaction or in a series of related transactions) all or any part of its assets (whether now owned or hereafter acquired), or Dispose of any Equity Interests of any Subsidiary, or purchase, lease or otherwise acquire (in one transaction or a series of related transactions) all or substantially all of the assets of any other person or division or line of business of a person (including, in each case, pursuant to a Delaware LLC Division), except that this Section 10.05 shall not prohibit:

(a) (i) the purchase and Disposition by the Lead Borrower or any Subsidiary of inventory, products, equipment, services or accounts receivable in the ordinary course of business and consistent with past practice,

(ii) [reserved],

(iii) the acquisition or lease (pursuant to an operating lease) of any other asset in the ordinary course of business by the Lead Borrower or any Subsidiary or, with respect to operating leases, otherwise for Fair Market Value on market terms (as determined in good faith by the Lead Borrower),

(iv) the Disposition by the Lead Borrower or any Subsidiary of surplus, obsolete, damaged or worn out equipment or other property in the ordinary course of business and consistent with past practice, or

(v) the Disposition of Permitted Investments in the ordinary course of business;

(b) if at the time thereof and immediately after giving effect thereto no Event of Default shall have occurred and be continuing or would result therefrom,

(i) the merger, amalgamation or consolidation of any Debtor with or into another Debtor in a transaction in which such Debtor is the survivor,

(ii) the merger, amalgamation or consolidation of any Non-Debtor Loan Party with or into another Non-Debtor Loan Party in a transaction in which such Non-Debtor Loan Party is the survivor,

(iii) the merger, amalgamation or consolidation of any Foreign Subsidiary (other than a Borrower) with or into any Non-Debtor Loan Party in a transaction in which the surviving, continuing or resulting entity is or becomes a Non-Debtor Loan Party,

and, in the case of each of clauses (i) to (iii), no person other than a Borrower or a Guarantor receives any consideration (unless otherwise permitted by Section 10.04),

(iv) the merger, amalgamation or consolidation of any Subsidiary that is not a Guarantor with or into any other Subsidiary that is not a Guarantor;

(c) Dispositions to the Lead Borrower, a Borrower or a Subsidiary; provided that any Dispositions by (x) a Debtor to a Subsidiary that is not a Debtor or (y) a Non-Debtor Loan Party to a Subsidiary that is not a Loan Party in each case, in reliance on this clause (c) shall be made in compliance with Section 10.04;

(d) licenses, sublicenses, or covenants not to sue by the Lead Borrower or any Subsidiary of or under Intellectual Property or software or other technology in the ordinary course of business and consistent with past practice or industry practice;

(e) Investments permitted by Section 10.04, Permitted Liens, and Restricted Payments permitted by Section 10.06;

(f) the discount, forgiveness or sale, in each case without recourse and in the ordinary course of business, of past due receivables arising in the ordinary course of business, but only in connection with the compromise or collection thereof consistent with customary industry practice (and not as part of any bulk sale or financing of receivables);

(g) other Dispositions of assets; provided that (i) any such Dispositions shall comply with the final sentence of this Section 10.05 and (ii) the Fair Market Value of the assets Disposed in all such Dispositions do not exceed $2,000,000 during the term of this Agreement;

(h) [reserved];

(i) leases, licenses or subleases or sublicenses of any real or personal property in the ordinary course of business and consistent with past practice;

(j) Dispositions of inventory or Dispositions or abandonment of Intellectual Property of the Lead Borrower and its Subsidiaries determined in good faith by the management of the Lead Borrower to be no longer economically practicable or commercially reasonable to maintain or useful or necessary in the operation of the business of the Lead Borrower or any of the Subsidiaries;

(k) [reserved];

(l) [reserved];

(m) [reserved];

(n) [reserved];

(o) any conversion of a Loan Party from a corporation to a limited liability company, or from a limited liability company to a corporation, or other change in corporate formation;

(p) any surrender, termination or waiver of contract rights or settlement, release, waiver of, recovery on or surrender of contract, tort or other claims of any kind;

(q) any solvent liquidation or dissolution of a Subsidiary of the Lead Borrower, provided that such Subsidiary's direct parent is also either the Lead Borrower or a Subsidiary and immediately becomes the owner of such Subsidiary's assets;

(r) [reserved];

(s) [reserved];

(t) the sale, transfer, termination or other disposition in connection with Hedging Agreements incurred in compliance with this Agreement or the partial or total unwinding of obligations in respect of any Bank Product Debt in compliance with this Agreement;

(u) sales of assets received by the Lead Borrower or any Subsidiary upon the foreclosure on a Lien;

(v) dispositions arising from foreclosures, condemnations, eminent domain, seizure, nationalization or any similar action with respect to assets, and dispositions of property subject to casualty events (including, without limitation, resulting from any involuntary loss or damage to or destruction of any property or assets of the Lead Borrower or any Subsidiary;

(w) the termination of leases and subleases in the ordinary course of business and consistent with past practice;

(x) [reserved];

(y) [reserved];

(z) any exchange of assets for other assets used in the business of the Lead Borrower or any Subsidiary in the ordinary course of business (including a combination of such assets and a *de minimis* amount of cash or Permitted Investments) of comparable or greater market value than the assets exchanged, as determined in good faith by the Lead Borrower;

(aa) [reserved];

(bb) the surrender or waiver of obligations of trade creditors or customers or other contract rights that were incurred in the ordinary course of business of the Lead Borrower or any of Subsidiary, including pursuant to any plan of reorganization or similar arrangement upon the bankruptcy or insolvency of any trade creditor or customer or compromise, settlement, release or surrender of a contract, tort or other litigation claim, arbitration or other disputes;

(cc) [reserved]; and

(dd) any Disposition of any Investment acquired by virtue of any Bail-in Action with respect to any Lender (or any direct or indirect parent company thereof);

provided that, in each case, if (i) (x) any such disposition involves assets that accounted for more than 5% of the Aggregate Borrowing Base immediately prior to such disposition and (y) any Revolving Loans are outstanding at such time, (ii) any such disposition results in a Borrower ceasing to be a Subsidiary, as a condition to such disposition or (iii) any such disposition is made in reliance on Section 10.05(aa) and involves Real Property included in the U.S. Borrowing Base, an updated Borrowing Base certificate shall be delivered to the Administrative Agent recalculating the applicable Borrowing Bases after giving effect to such disposition.

Notwithstanding anything to the contrary contained in Section 10.05 above, no Disposition of assets under Section 10.05(g) shall in each case be permitted unless (i) such Disposition is for Fair Market Value, and (ii) at least 75% of the proceeds of such Disposition (except to Debtors) consist of cash or Permitted Investments.

Section 10.06 Restricted Payments. (i) Declare or pay any dividend or make any other distribution (by reduction of capital or otherwise), whether in cash, property, securities or a combination thereof, with respect to any of its Equity Interests (other than dividends and distributions on Equity Interests payable solely by the issuance of Qualified Equity Interests of the person declaring, paying or making such dividends or distributions), (ii) directly or indirectly redeem, purchase, retire or otherwise acquire for value

(or permit any Subsidiary to purchase or acquire) any of the Lead Borrower's Equity Interests or set aside any amount for any such purpose (other than through the issuance of Qualified Equity Interests) or (iii) make any Junior Debt Restricted Payment (all of the foregoing, "Restricted Payments"); provided, however, that:

(a) Restricted Payments may be made by any Subsidiary (provided that Restricted Payments made by a non-Wholly Owned Subsidiary must be made on a *pro rata* basis (or more favorable basis from the perspective of the Lead Borrower or the Subsidiary which is the parent of such Subsidiary) based on its ownership interests in such non-Wholly Owned Subsidiary);

(b) Restricted Payments in respect of DIP Term Loans may be made by the Lead Borrower on or after Full Senior Obligation Repayment; and

(c) any person may (i) make non-cash repurchases of Equity Interests deemed to occur upon exercise or settlement of stock options or other Equity Interests if such Equity Interests represent a portion of the exercise price of or withholding obligation with respect to such options or other Equity Interests or (ii) withhold a portion of Equity Interests issued upon any such exercise to cover any withholding tax obligations in respect of such issuance.

Section 10.07 Transactions with Affiliates.

(a) Sell or transfer any property or assets to, or purchase or acquire any property or assets from, or otherwise engage in any other transaction with, any of its Affiliates (other than the Lead Borrower, and the Subsidiaries or any person that becomes a Subsidiary as a result of such transaction) in a transaction (or series of related transactions) involving aggregate consideration in excess of $2,500,000 unless the terms of such transaction are substantially no less favorable to the Lead Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate, as determined, in the case of any transaction (or series of related transactions) involving aggregate consideration in excess of $5,000,000, by the Board of Directors of the Lead Borrower or such Subsidiary in good faith.

(b) The foregoing clause (a) shall not prohibit, to the extent otherwise permitted under this Agreement,

(i) any issuance of securities, or other payments, awards or grants in cash, securities or otherwise pursuant to, or the funding of, employment arrangements, equity purchase agreements, stock options and stock ownership plans or similar employee benefit plans approved by the Board of Directors of the Lead Borrower or any Subsidiary, as appropriate,

(ii) transactions with a person that is an Affiliate of the Lead Borrower solely because the Lead Borrower owns, directly or through a Subsidiary, an Equity Interest in, or controls, such person,

(iii) transactions among the Lead Borrower or any Subsidiary or any entity that becomes a Subsidiary as a result of such transaction (including via merger, consolidation or amalgamation in which the Lead Borrower or a Subsidiary is the surviving entity),

(iv) the payment of fees, reasonable out-of-pocket costs and indemnities to directors, officers, consultants and employees of the Lead Borrower and the Subsidiaries in the ordinary course of business,

(v) permitted transactions, agreements and arrangements in existence on the DIP Closing Date and set forth on Schedule 10.07, and, in each case, any amendment thereto or replacement thereof or similar arrangement to the extent such amendment, replacement or arrangement is not more disadvantageous to the Lenders when taken as a whole in any material respect than the original agreement as in effect on the DIP Closing Date (as determined by the Lead Borrower in good faith),

(vi) (A) any employment agreement, consulting agreement, severance agreement, compensation arrangement, officer or director indemnification agreement or any similar arrangement entered into by the Lead Borrower or any of the Subsidiaries in the ordinary course of business and any payments pursuant thereto, (B) any subscription agreement or similar agreement pertaining to the repurchase of Equity Interests pursuant to put/call rights or similar rights with employees, officers or directors, and (C) any employee compensation, benefit plan or arrangement, any health, disability or similar insurance plan which covers employees, and any reasonable employment contract and transactions pursuant thereto,

(vii) Restricted Payments permitted under Section 10.06 and Investments permitted under Section 10.04,

(viii) transactions for the purchase or sale of goods, equipment, products, parts and services entered into in the ordinary course of business and consistent with past practice,

(ix) any transaction in respect of which the Lead Borrower delivers to the Administrative Agent a letter addressed to the Board of Directors of the Lead Borrower from an accounting, appraisal or investment banking firm, in each case of nationally recognized standing that is in the good faith determination of the Lead Borrower qualified to render such letter, which letter states that (i) such transaction is on terms that are substantially no less favorable to the Lead Borrower or such Subsidiary, as applicable, than would be obtained in a comparable arm's-length transaction with a person that is not an Affiliate or (ii) such transaction is fair to the Lead Borrower or such Subsidiary, as applicable, from a financial point of view,

(x) payments to or the receipts of payments from, and entry into and the consummation of transactions with joint ventures entered into in the ordinary course of business,

(xi) [reserved],

(xii) transactions between the Lead Borrower or any of the Subsidiaries and any person, a director of which is also a director of the Lead Borrower; provided, however, that (A) such director abstains from voting as a director of the Lead Borrower on any matter involving such other person and (B) such person is not an Affiliate of the Lead Borrower for any reason other than such director's acting in such capacity,

(xiii) transactions permitted by, and complying with, the provisions of Section 10.05,

(xiv) intercompany transactions undertaken in good faith (as certified by a Responsible Officer of the Lead Borrower) for the purpose of improving the consolidated Tax efficiency of the Lead Borrower and the Subsidiaries and not for the purpose of circumventing any covenant set forth herein; provided that any such transaction does not materially decrease the value of any interest of any Secured Party in the Guarantees or Collateral,

(xv) payments, loans (or cancellation of loans) or advances to employees or consultants that are (i) made in the ordinary course of business or approved by a majority of the Disinterested Directors of the Lead Borrower in good faith, (ii) made in compliance with applicable law and (iii) otherwise permitted under this Agreement,

(xvi) transactions with customers, clients or suppliers, or purchasers or sellers of goods or services, in each case in the ordinary course of business that are fair to the Lead Borrower or the Subsidiaries,

(xvii) any issuance of Qualified Equity Interests of the Lead Borrower to Affiliates of the Lead Borrower, and

(xviii) [reserved],

(xix) [reserved],

(xx) any contributions to the common equity capital of the Lead Borrower or any Debtor Subsidiary.

(xxi) [reserved],

(xxii) [reserved].

Notwithstanding anything contained in this Section 10.07, none of the exceptions specified in clause (b) above shall be construed to permit a transaction otherwise prohibited by any other Section of this Article 10 .

Section 10.08 Business of the Lead Borrower and the Subsidiaries; Etc. Notwithstanding any other provisions hereof, engage at any time to any material respect in any business or business activity substantially different from any business or business activity conducted by any of them on the DIP Closing Date and/or any Similar Business. For the avoidance of doubt, any Disposition that does not conflict with this Agreement, or that is otherwise approved in accordance with the terms of this Agreement, shall not be deemed to conflict with this Section 10.08.

Section 10.09 Restrictions on Subsidiary Distributions and Negative Pledge Clauses Permit the Lead Borrower or any Subsidiary to enter into any agreement or instrument that by its terms restricts (A) the payment of dividends or other distributions or the making of cash advances to the Lead Borrower or any Subsidiary that is a direct or indirect parent of such Subsidiary or (B) the granting of Liens by any Borrower or any Guarantor pursuant to the Security Documents, in each case other than those arising under any Loan Document, except, in each case, restrictions existing by reason of:

(a) restrictions imposed by applicable law rule, regulation, order or other requirement;

(b) contractual encumbrances or restrictions in effect on the DIP Closing Date under Indebtedness existing on the DIP Closing Date (provided that, in each case, such documentation shall permit the Liens on Collateral granted pursuant to the Loan Documents);

(c) any restriction on a Subsidiary imposed pursuant to an agreement entered into for the sale or disposition of the Equity Interests or assets of a Subsidiary pending the closing of such sale or disposition;

(d) customary provisions in joint venture agreements and other similar agreements applicable to joint ventures entered into in the ordinary course of business;

(e) any restrictions imposed by any agreement relating to secured Indebtedness permitted by this Agreement to the extent that such restrictions apply only to the specific property or assets securing such Indebtedness;

(f) any restrictions imposed by any agreement relating to Indebtedness permitted to be incurred under Section 10.01, to the extent such restrictions either (i) are not materially more restrictive, taken as a whole, than the restrictions contained in this Agreement, or (ii) are not materially more disadvantageous to the Lenders than is customary in comparable financings (in each case, as determined in good faith by the Lead Borrower, and in the case of clause (ii), either (x) the Lead Borrower determines in good faith that such encumbrance or restriction will not affect the Borrower's ability to make principal or interest payments on the Loan Obligations or (y) such encumbrances or restrictions apply only during the continuance of a default in respect of payment or a financial maintenance covenant relating to such Indebtedness);

(g) customary provisions contained in leases or licenses of Intellectual Property and other similar agreements entered into in the ordinary course of business;

(h) customary provisions restricting subletting or assignment of any lease governing a leasehold interest;

(i) customary provisions restricting assignment, mortgaging or hypothecation of any agreement entered into in the ordinary course of business;

(j) customary restrictions and conditions contained in any agreement relating to the sale, transfer, lease or other disposition of any asset permitted under Section 10.05 pending the consummation of such sale, transfer, lease or other disposition;

(k) Permitted Liens and customary restrictions and conditions contained in the document relating thereto, so long as (1) such restrictions or conditions relate only to the specific asset subject to such Lien, and (2) such restrictions and conditions are not created for the purpose of avoiding the restrictions imposed by this Section 10.09;

(l) customary net worth provisions contained in Real Property leases entered into by Subsidiaries, so long as the Lead Borrower has determined in good faith that such net worth provisions would not reasonably be expected to impair the ability of the Lead Borrower and its Subsidiaries to meet their ongoing obligations;

(m) any agreement in effect at the time such subsidiary becomes a Subsidiary, so long as such agreement was not entered into in contemplation of such person becoming a Subsidiary;

(n) restrictions in agreements representing Indebtedness permitted under Section 10.01 of a Subsidiary that is not a Guarantor that apply only to such Subsidiary and its Subsidiaries that are not Guarantors;

(o) customary restrictions contained in contracts, leases, subleases, licenses, sublicenses or Equity Interests or asset sale agreements otherwise permitted hereby as long as such restrictions relate to the Equity Interests and assets subject thereto;

(p) restrictions on cash or other deposits or net worth imposed by customers under contracts entered into in the ordinary course of business;

(q) [reserved];

(r) [reserved];

(s) any encumbrances or restrictions of the type referred to in Section 10.09(A) above imposed by any other instrument or agreement entered into after the DIP Closing Date that contains encumbrances and restrictions that, as determined by the Lead Borrower in good faith, will not materially adversely affect the Borrowers' ability to make payments on the Loans;

(t) customary restrictions imposed in connection with purchase money obligations, mortgage financings and Capitalized Lease Obligations on the property purchased or leased relating to the sale, lease or transfer of such property;

(u) provisions limiting the disposition or distribution of assets or property in joint venture agreements, asset sale agreements, sale leaseback agreements, stock sale agreements and other similar agreements (including agreements entered into in connection with an Investment permitted hereunder), which limitation is applicable only to the assets that are the subject of such agreements;

(v) restrictions imposed in connection with any Investment permitted under Section 10.04; and

(w) [reserved];

(x) any encumbrances or restrictions of the type referred to in clause 10.09(A) or (B) above imposed by any amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements or refinancings of or similar arrangements to the contracts, instruments or obligations referred to in clauses (a) through (v) above; provided that such amendments, modifications, restatements, renewals, increases, supplements, refundings, replacements, refinancings or similar arrangements are, in the good faith judgment of the Lead Borrower, no more restrictive as a whole with respect to such dividend and other payment restrictions than those contained in the dividend or other payment restrictions as contemplated by such provisions prior to such amendment, modification, restatement, renewal, increase, supplement, refunding, replacement, refinancing or similar arrangement

Section 10.10 Financial Covenant. On any date (x) during the Interim Period, have Aggregate Availability of less than $22,500,000 and (y) after the last day of the Interim Period, have Aggregate Availability of less than $30,000,000.

Section 10.11 Fiscal Quarter and/or Fiscal Year. In the case of the Lead Borrower, permit any change to its fiscal quarter and/or fiscal year; provided that the Lead Borrower and its Subsidiaries may change their fiscal quarter and/or fiscal year end one or more times, subject to such adjustments to this Agreement as the Lead Borrower and Administrative Agent shall reasonably agree are necessary or appropriate in connection with such change (and the parties hereto hereby authorize the Lead Borrower and the Administrative Agent to make any such amendments to this Agreement as they jointly deem necessary to give effect to the foregoing).

Section 10.12 Superpriority Claims. Incur, create, assume, suffer to exist or permit any other Superpriority Claim that is pari passu with or senior to the claims of the Agents and the Secured Parties against the Debtors, except with respect to the Carve-Out.

Section 10.13 DIP Term Facility. Prior to the occurrence of the Full Senior Obligation Repayment (and, in addition, with respect to clause (a), full and final payment in cash of all Prepetition Obligations) (a) make payments on account of the Carve-Out from proceeds of any Revolving Loan advances other than those permitted by the Applicable DIP Order; or (b) repay the DIP Term Facility from proceeds of Collateral or Revolving Loans.

Section 10.14 DIP Term Lender Covenants. At any time (a) cause the Aggregate First Out Obligations to exceed the applicable Aggregate First Out Obligation Cap or (b) enter into any agreement or plan in connection with the sale or other disposition of all or a substantial portion of the assets of the Lead Borrower (or any division of its business) on a going concern basis with a counterparty that is not the Stalking Horse Bidder, unless (i) such agreement or plan has provided for sources of funds sufficient to cause the Termination Date to occur upon the consummation thereof or (ii) if the Required DIP Term Lenders have consented to such agreement or plan in their commercially reasonable judgment (provided that, in the case of this clause (ii), such consent shall not be required if (A) the Sellers (as defined in the Stalking Horse APA) have validly terminated the Stalking Horse APA pursuant to Section 8.1(d) of the Stalking Horse APA or pursuant to 8.1(b)(ii) of the Stalking Horse APA as a result of the conditions set forth in Sections 7.1(f) or 7.2(d) of the Stalking Horse APA failing to be satisfied, (B) if the Stalking Horse Bidder has validly terminated the Stalking Horse APA as a result of the conditions set forth in Sections 7.1(f) or 7.2(d) of the Stalking Horse APA failing to be satisfied; or (C) Stalking Horse Bidder has validly terminated the Stalking Horse APA pursuant to 8.1(b)(ii) of the Stalking Horse APA as a result of the conditions set forth in Sections 7.1(f) or 7.2(d) of the Stalking Horse APA failing to be satisfied.

ARTICLE 11 EVENTS OF DEFAULT

Section 11.01 Events of Default. In case of the happening of (each, an "Event of Default") on and after the DIP Closing Date, any of the following events:

(a) any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document or any certificate or document delivered pursuant hereto or thereto shall prove to have been false or misleading in any material respect when so made or deemed made;

(b) default shall be made in the payment of any principal of any Loan, any North American LC Disbursement or any Swiss LC Disbursement when and as the same shall become due and payable, whether at the due date thereof or at a date fixed for prepayment thereof or by acceleration thereof or otherwise;

(c) default shall be made in the payment of any interest on any Loan or in the payment of any Fee or any other amount (other than an amount referred to in clause (b) above) due under any Loan Document, when and as the same shall become due and payable, and such default shall continue unremedied for a period of two (2) Business Days;

(d) (x) default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in Section 9.01(a) (solely with respect to the Lead Borrower and the other Borrowers), 9.05(a), 9.08, 9.18(c)-(g), Section 9.24, Section 9.25, Section 9.26, in Article 10 or in any Applicable DIP Order, (y) the Borrowers shall fail to deliver a Borrowing Base Certificate required to be delivered under this Agreement within two (2) Business Days of the date such Borrowing Base Certificate is required to be delivered or (z) default shall be made in the due observance or performance by any Borrower of any covenant, condition or agreement contained in Section 9.04(k) or (g), and such default shall continue unremedied for a period of five (5) consecutive Business Days provided that (A) in each case, any Revolving Credit Facility Matter Event of Default shall not constitute an Event of Default with respect to the DIP Term Facility unless and until the Revolving Lenders shall have terminated their

Revolving Commitments and declared all amounts outstanding under the DIP ABL Facilities to be due and payable (and such declaration has not been rescinded) and (B) any Event of Default in respect of the DIP Term Budget Covenant or Section 10.14 shall not constitute an Event of Default with respect to the DIP ABL Facilities unless and until the DIP Term Lenders shall have terminated their DIP Term Commitments and declared all amounts outstanding under the DIP Term Loans to be due and payable (and such declaration has not been rescinded);

(e) default shall be made in the due observance or performance by any of the Loan Parties of any covenant, condition or agreement contained in any Loan Document (other than those specified in clauses (b), (c) and (d) above) and such default shall continue unremedied for a period of thirty (30) days after the earlier of (x) notice thereof from the Administrative Agent to the Lead Borrower and (y) any Borrower's actual knowledge of such default provided that, in each case, any Revolving Credit Facility Matter Event of Default shall not constitute an Event of Default with respect to the DIP Term Facility unless and until the Revolving Lenders shall have terminated their Revolving Commitments and declared all amounts outstanding under the DIP ABL Facilities to be due and payable (and such declaration has not been rescinded);

(f) (i) any event or condition occurs that (A) results in any Material Indebtedness becoming due prior to its scheduled maturity or (B) enables or permits (with all applicable grace periods having expired; it being understood and agreed, for the avoidance of doubt, that during such time when any such grace period is in effect and has not expired, no Default or Event of Default shall have occurred pursuant to this clause (B) with respect to such event or condition) the holder or holders of any Material Indebtedness or any trustee or agent on its or their behalf to cause any such Material Indebtedness to become due, or to require the prepayment, repurchase, redemption or defeasance thereof, prior to its scheduled maturity, in each case without such Material Indebtedness having been discharged, or any such event of or condition having been cured promptly; provided that this clause (f) shall not apply to any secured Indebtedness that becomes due as a result of (1) the commencement of the Chapter 11 Cases or (2) the voluntary sale or transfer of the property or assets securing such Indebtedness if (x) such sale or transfer is permitted hereunder and under the documents providing for such Indebtedness and (y) repayments are made as required by the terms of the respective Indebtedness; provided further that, notwithstanding the foregoing, none of the following events shall constitute an Event of Default under this clause (f) unless such event results in the acceleration of other Material Indebtedness of the Lead Borrower or any Subsidiary: (i) any secured Indebtedness becoming due as a result of a casualty or similar event, (ii) any change of control offer made within 60 days after an Acquisition with respect to, and effectuated pursuant to, Indebtedness of an acquired business, (iii) any default under Indebtedness of an acquired business if such default is cured, or such Indebtedness is repaid, within 60 days after the Acquisition of such business so long as no other creditor accelerates or commences any kind of enforcement action in respect of such Indebtedness, (iv) mandatory prepayment requirements arising from the receipt of net cash proceeds from debt, dispositions (including casualty losses, governmental takings and other involuntary dispositions), equity issues or excess cash flow, in each case pursuant to Indebtedness of an acquired business), (v) prepayments required by the terms of Indebtedness as a result of customary provisions in respect of illegality, replacement of lenders and gross-up provisions for Taxes, increased costs, capital adequacy and other similar customary requirements and (vi) any voluntary prepayment, redemption or other satisfaction of Indebtedness that becomes mandatory in accordance with the terms of such Indebtedness solely as the result of the Lead Borrower or any Subsidiary delivering a prepayment, redemption or similar notice with respect to such prepayment, redemption or other satisfaction;

(g) there shall have occurred a Change of Control;

(h) an involuntary proceeding shall be commenced or an involuntary petition shall be filed in a court of competent jurisdiction seeking (i) relief in respect of the Swiss Borrower or any of the Material

Subsidiaries (other than a Debtor), or of a substantial part of the property or assets of the Swiss Borrower or any Material Subsidiary (other than a Debtor), under the Bankruptcy Code, or any other federal, state, provincial or foreign bankruptcy, insolvency, receivership, administration or any other Debtor Relief Law, (ii) the appointment of a receiver, interim receiver, trustee, monitor, custodian, sequestrator, conservator, examiner, liquidator, administrator, Controller, receiver manager or similar official for or to the Swiss Borrower or any of the Material Subsidiaries (other than a Debtor) for or to a substantial part of the property or assets of the Swiss Borrower or any of the Material Subsidiaries (other than a Debtor) or (iii) the winding-up, liquidation, reorganization, dissolution, compromise, arrangement, administration, examinership, receivership or other relief in respect of the Swiss Borrower or any Material Subsidiary (other than a Debtor) (except, in each case, in a transaction permitted hereunder); and, in the case of the Swiss Borrower or any Material Subsidiary (other than a Debtor) such proceeding or petition shall continue undismissed for 60 days or an order or decree approving or ordering any of the foregoing shall be entered;

(i) (x) the Swiss Borrower or any Material Subsidiary (other than a Debtor) shall (i) voluntarily commence any proceeding or file any petition seeking relief under the Bankruptcy Code, as now constituted or hereafter amended, or any other federal, state or foreign bankruptcy, insolvency, receivership, administration, arrangement or any other Debtor Relief Law, (ii) consent to the institution of, or fail to contest in a timely and appropriate manner, any proceeding or the filing of any petition described in clause (h) above, (iii) apply for or consent to the appointment of a receiver, interim receiver, trustee, monitor, custodian, sequestrator, conservator, examiner, liquidator, administrator or similar official for the Swiss Borrower or any of the Material Subsidiaries (other than a Debtor) or for a substantial part of the property or assets of the Swiss Borrower or any Material Subsidiary (other than a Debtor), (iv) file an answer admitting the material allegations of a petition filed against it in any such proceeding, (v) make a general assignment for the benefit of creditors or (vi) become unable or fail generally to pay its debts as they become due or (y) without prejudice to any other provisions of this Article 11, any of the following occurs in respect of the Swiss Borrower: the occurrence of any event or procedure in relation to the Swiss Borrower which is analogous to those listed in the clauses (f), (h), (i) and (j) of this Section 11.01 above including, inter alia "Zahlungsunfähigkeit" (inability to pay its debts), "Zahlungseinstellung" (suspending making payments), or, provided that no subordination (Rangrücktritt) within the meaning of article 725 of the Swiss Code of Obligations in an amount sufficient to cover the respective shortfall (Unterdeckung) is put in place, "Überschuldung" within the meaning of art. 725 and art. 820 para. 1 of the Swiss Federal Code of Obligations (CO) (over-indebtedness, i.e. liabilities not covered by the assets), duty of filing of the balance sheet with the judge due to over-indebtedness or insolvency pursuant to art. 725a and art. 820 para. 1 CO, "Konkurseröffnung und Konkurs" (declaration of bankruptcy and bankruptcy), "Nachlassverfahren" (composition with creditors) including in particular "Nachlassstundung" (moratorium) and proceedings regarding "Nachlassvertrag" (composition agreements) and "Notstundung" (emergency moratorium), proceedings regarding "Fälligkeitsaufschub" (postponement of maturity), "Konkursaufschub / Gesellschaftsrechtliches Moratorium" (postponement of the opening of bankruptcy; moratorium proceedings) pursuant to art. 725a or art. 820 para. 2 CO, notification of the judge of a capital loss or over-indebtedness under these provisions and "Auflösung / Liquidation" (dissolution/liquidation);

(j) any Australian Loan Party (A) is (or has stated that it is) insolvent under administration or insolvent (each as defined in the Australian Corporations Act); (B) is in liquidation, in provisional liquidation, under administration or wound up or has had a controller (as defined in the Australian Corporations Act) appointed to its property; (C) is subject to any arrangement, assignment, moratorium or composition, protected from creditors under any statute or dissolved (in each case, other than to carry out a reconstruction or amalgamation while solvent on terms approved by the Administrative Agent); (D) has had an application or order made or resolution passed, in each case in connection with that person, which is preparatory to or could result in any of clauses (A), (B) or (C) above (and in the case of an application or similar action, it is not stayed, withdrawn or dismissed within 21 days); (E) is taken (under section 459F(1) of the Australian Corporations Act) to have failed to comply with a statutory demand; (F) is the subject of

an event described in section 459C(2)(b) or section 585 of the Australian Corporations Act (or it makes a statement from which the Administrative Agent reasonably deduces it is so subject); or (G) is otherwise unable to pay its debts generally when they fall due;

(k) the failure by the Swiss Borrower or any Material Subsidiary (other than a Debtor) to pay one or more final judgments aggregating in excess of $50,000,000, which judgments are not discharged or effectively waived or stayed for a period of 45 consecutive days, or any action shall be legally taken by a judgment creditor to attach or levy upon assets or properties of the Swiss Borrower or any Material Subsidiary (other than a Debtor) to enforce any such judgment; provided, however, that any such judgment shall not be included in the calculation of the aggregate amount of judgments under this clause (k) if and for so long as (A) the amount of such judgment is covered by a valid and binding policy of insurance between the defendant and the insurer covering payment thereof and (B) such insurer, which shall be rated at least "A" by A.M. Best Company, has been notified of, and has not disputed the claim made for payment of, the amount of such judgment;

(l) (i) an ERISA Event shall have occurred or (ii) the Lead Borrower, any other Borrower or any Subsidiary or any ERISA Affiliate shall have been notified by the sponsor of a Multiemployer Plan that such Multiemployer Plan is in reorganization or is being terminated, within the meaning of Title IV of ERISA; and in the case of each of clauses (i) and (ii) above, such event or condition, together with all other such events or conditions, if any, would reasonably be expected to have a Material Adverse Effect;

(m) (i) any Loan Document, including any subordination provision therein, shall for any reason cease to be (or be asserted in writing by any Borrower or any Guarantor to not be) a legal, valid and binding obligation of any Loan Party party thereto (other than in accordance with its terms), (ii) any security interest purported to be created by any Security Document or the DIP Orders and to extend to assets that constitute a material portion of the Collateral shall cease to be, or shall be asserted in writing by any Borrower or any other Loan Party not to be, a valid and perfected security interest (perfected as required by this Agreement, the relevant Security Document or the DIP Orders and subject to such limitations and restrictions as are set forth herein and therein) in the securities, assets or properties covered thereby (other than in accordance with the terms of the applicable Loan Documents), except to the extent that any such loss of perfection results from the limitations of foreign laws, rules and regulations as they apply to pledges of Equity Interests in Foreign Subsidiaries or the application thereof other than Specified Foreign Laws, or from failure of the Collateral Agent to maintain possession of certificates actually delivered to it representing securities pledged under the Initial U.S. Security Agreement or to file Uniform Commercial Code continuation statements or to make any other similar filings (provided that the Loan Parties have provided any cooperation, documentation or other assistance reasonably requested on reasonable notice by the Collateral Agent to enable the Collateral Agent to make any such filings by the applicable deadline), and in any case so long as such failure does not result from the breach or non-compliance with the Loan Documents by any Loan Party (iii) a material portion of the Guarantees pursuant to the Loan Documents by the Guarantors guaranteeing the Obligations, shall cease to be in full force and effect (other than in accordance with the terms thereof), or shall be asserted in writing by any Borrower or any Guarantor not to be in effect or not to be legal, valid and binding obligations (other than in accordance with the terms thereof) or (iv) the DIP ABL Obligations and the DIP Term Obligations cease to have the same benefit under any Guarantee or in respect to any Collateral except to the extent permitted under Section 11.02; provided that no Event of Default shall occur under this Section 11.01(m) if the Loan Parties cooperate with the Collateral Agent to replace or perfect such security interest and Lien, such security interest and Lien is promptly replaced or perfected (as needed) and the rights, powers and privileges of the Secured Parties are not materially adversely affected by such replacement;

(n) at any time after the DIP Closing Date:

(i) the entry of an order dismissing any of the Chapter 11 Cases or converting any of the Chapter 11 Cases to a case under chapter 7 of the Bankruptcy Code;

(ii) the entry of an order appointing a chapter 11 trustee in any of the Chapter 11 Cases;

(iii) the entry of an order in any of the Chapter 11 Cases appointing an examiner having expanded powers (beyond those set forth under Sections 1106(a)(3) and (4) of the Bankruptcy Code);

(iv) the entry of an order in any of the Chapter 11 Cases denying or terminating use of cash collateral by the Loan Parties;

(v) the filing of any pleading by any Loan Party seeking, or otherwise consenting to, any of the matters set forth in clauses (i) through (iv) above;

(vi) (a) an amendment, supplement or other modification shall have been made to, or a consent or waiver shall have been granted with respect to any departure by any person from the provisions of, the Qualified Sale Documentation, in each case, that is not reasonably satisfactory to the Administrative Agent, (b) any Qualified Sale is withdrawn without the consent of the Required Lenders, (c) any sale, disposition, transfer or plan with respect to substantially all of the Debtors' or Loan Parties' assets other than a Qualified Sale, is filed or otherwise pursued without the prior written consent of the Required Lenders, (d) the Bankruptcy Court shall terminate or reduce the period pursuant to Section 1121 of the Bankruptcy Code during which the Debtors have the exclusive right to file a plan of reorganization and solicit acceptances thereof, (e) the Bankruptcy Court shall grant relief that is inconsistent with a Qualified Sale in any material respect and that is adverse to the Administrative Agent's, the Lead Arrangers' or the Lenders' interests or inconsistent with the Loan Documents or (f) any of the Loan Parties or any of their affiliates shall file any motion or pleading with the Bankruptcy Court that is inconsistent in any material respect with a Qualified Sale and such motion or pleading has not been withdrawn prior to the earlier of (A) three business days of the Borrowers receiving notice from the Administrative Agent and (B) entry of an order of the Bankruptcy Court approving such motion or pleading;

(vii) (w) the entry of the Final Order shall not have occurred within forty (40) days after entry of the Interim Order (or such later date as approved by the Administrative Agent and Required Lenders), or (x) there shall be a breach by any Debtor of any provisions of the Interim Order (prior to entry of the Final Order) or the Final Order (from and after its entry), or (y) the Interim Order (prior to entry of the Final Order) or Final Order (from and after its entry) shall cease to be in full force and effect or (z) any of the Interim Order (prior to entry of the Final Order) or Final Order (from and after its entry), the Bidding Procedures, the Bidding Procedures Motion (from and after its filing), the Bidding Procedures Order (from and after its entry), the First Day Orders (from and after their entry), the Qualified Sale Order (from and after its entry) or any other orders of the Bankruptcy Court granting interim or final relief related to the Chapter 11 Cases (from and after entry thereof), in each case, shall have been reversed, modified, amended, stayed, vacated or subject to stay pending appeal, in the case of any modification or amendment, without the prior written consent of the Administrative Agent and Required Lenders;

(viii) the entry of an order in any of the Chapter 11 Cases charging any of the Collateral under Section 506(c) of the Bankruptcy Code against the Lenders or the Agent under which any person takes action against the Collateral or that becomes a final non-appealable order, or the commencement of other actions that are materially adverse to the Administrative Agent, the Lead

Arrangers, the Lenders or their respective rights and remedies under the Facilities in any of the Chapter 11 Cases or inconsistent with the Loan Documents;

(ix) the entry of an order granting relief from any stay of proceeding (including, without limitation, the automatic stay) so as to allow a third party to proceed with foreclosure (or granting of a deed in lieu of foreclosure) against any asset with a value in excess $10.0 million;

(x) the entry of any post-petition judgment against any Loan Party or any judgment that would constitute an administrative expense in the Chapter 11 Cases, in either case in excess of $5.0 million;

(xi) the payment of any prepetition claims (other than as permitted by the Interim Order (prior to entry of the Final Order), the Final Order or pursuant to an order entered in the Chapter 11 Cases that is supported, or not objected to, by the Administrative Agent);

(xii) any lien securing or superpriority claim in respect of the Obligations shall cease to be valid, perfected (if applicable) and enforceable in all respects or to have the priority granted under the Interim Order (prior to entry of the Final Order) and the Final Order;

(xiii) the existence of any claims or charges, or the entry of any order of the Bankruptcy Court authorizing any claims or charges, other than in respect of the Facilities or as otherwise permitted under the Loan Documents, entitled to superpriority under Section 364(c)(1) of the Bankruptcy Code pari passu or senior to the DIP ABL Facilities, or there shall arise or be granted by the Bankruptcy Court (i) any claim having priority over any or all administrative expenses of the kind specified in clause (b) of Section 503 or clause (b) of Section 507 of the Bankruptcy Code (other than the Carve-Out) or (ii) any Lien on the Collateral having a priority senior to or pari passu with the Liens and security interests granted herein, except as expressly provided in this Agreement or in the Interim Order or the Final Order (but only in the event specifically consented to by the Administrative Agent), whichever is in effect;

(xiv) the Loan Parties or any of their subsidiaries shall obtain court authorization to commence, or shall commence, join in, assist or otherwise participate as an adverse party in any suit or other proceeding against the Agents, the Lead Arrangers or any of the Lenders relating to the Facilities or against the administrative agent or other holders of obligations under the Prepetition Credit Agreement, unless such suit or other proceeding is in connection with the enforcement of the Loan Documents against the Agents, the Lead Arrangers or the Lenders, and the order confirming a Qualified Sale provides that any such suit or proceeding shall be dismissed with prejudice;

(xv) failure to satisfy any of the Milestones in accordance with the terms relating to such Milestone;

(xvi) the entry of an order avoiding or disgorging the application of any payments or collections received by the Prepetition Agent or Prepetition Lenders to the Prepetition Obligations as provided for herein; or

(xvii) after the entry thereof by the Bankruptcy Court, the Qualified Sale Order shall cease to be in full force and effect, or any Loan Party shall fail to satisfy in full all Obligations on or prior to the effective date of a Qualified Sale or fail to comply in any material respect with the Qualified Sale Order, or the Qualified Sale Order shall have been revoked, remanded, vacated,

reversed, rescinded or modified or amended in any manner that is adverse to the Agents', the Lead Arrangers' or the Lenders' interests or inconsistent with the Loan Documents; or

(o) Any DIP Term Lender that is an Affiliate of the Stalking Horse Bidder, shall have failed to fund in full the DIP Term Loans (if the conditions precedent set forth in Section 6.02 and Section 6.03 are otherwise satisfied) in an aggregate principal amount equal to its DIP Term Commitment within one (1) Business Day of the entry by the Bankruptcy Court of the Final Order and/or the proceeds of such DIP Term Loans are not applied towards achieving the Prepetition Obligations Refinancing as set forth in Section 8.12(b); provided that an Event of Default under this Section 11.01(o) shall not constitute an Event of Default with respect to the DIP Term Facility unless and until the Revolving Lenders shall have terminated their Revolving Commitments and declared all amounts outstanding under the DIP ABL Facilities to be due and payable (and such declaration has not been rescinded),

then, and in every such event (other than an event with respect to the Swiss Borrower described in clause (h), (i) or (j) above), and at any time thereafter during the continuance of such event, the Administrative Agent, at the request of either the Required Revolving Lenders or the Required DIP Term Lenders shall (provided that (x) if a Revolving Credit Facility Matter Event of Default occurs and is continuing, the Administrative Agent shall at the request of the Required Revolving Lenders, only with respect to the Revolving Commitments and any Letters of Credit and (y) if an Event of Default resulting from the breach of the DIP Term Budget Covenant or Section 10.14 occurs and is continuing, the Administrative Agent shall at the request of the Required DIP Term Lenders, only with respect to the DIP Term Commitments and the DIP Term Loans) by notice to the Lead Borrower, take any or all of the following actions, at the same or different times: (i) terminate, reduce or condition any of the Commitments or make any adjustment to any Borrowing Base, (ii) declare the Loans then outstanding and all other Obligations to be forthwith due and payable in whole or in part (in which case any principal not so declared to be due and payable may thereafter be declared to be due and payable), whereupon the principal of the Loans and other Obligations so declared to be due and payable, together with accrued interest thereon and any unpaid accrued fees (including, for the avoidance of doubt, any break funding payments) and all other liabilities of the Borrowers accrued hereunder and under any other Loan Document, shall become forthwith due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Borrowers, anything contained herein or in any other Loan Document to the contrary notwithstanding and (iii) require the Loan Parties to Cash Collateralize the LC Obligations, and, if the Loan Parties fail promptly to deposit such Cash Collateral, the Administrative Agent may (and shall upon the direction of Required Lenders) advance the required Cash Collateral as Revolving Loans; and in any event with respect to the Swiss Borrower described in clause (h), (i) or (j) above, the Commitments shall automatically terminate and the principal of the Loans then outstanding, together with accrued interest thereon and any unpaid accrued fees (including, for the avoidance of doubt, any break funding payments) and all other liabilities of the Swiss Borrower accrued hereunder and under any other Loan Document, shall automatically become due and payable, without presentment, demand, protest or any other notice of any kind, all of which are hereby expressly waived by the Swiss Borrower, anything contained herein or in any other Loan Document to the contrary notwithstanding.

In addition to any other rights and remedies granted to the Administrative Agent and the Secured Parties in the Loan Documents, following the occurrence and continuation of an Event of Default, the Collateral Agent on behalf of the Secured Parties shall, at the direction of either the Required Revolving Lenders or the Required DIP Term Lenders, exercise all rights and remedies of a secured party under the Uniform Commercial Code, the Canadian PPSA, the Australian PPSA or any other applicable law. Without limiting the generality of the foregoing, following the occurrence and continuation of an Event of Default, the Collateral Agent, without demand of performance or other demand, presentment, protest, advertisement or notice of any kind (except any notice required by law referred to below) to or upon any Guarantor or any other person (all and each of which demands, defenses, advertisements and notices are hereby waived),

may in such circumstances, subject to applicable laws and conditions provided by the relevant Security Documents, forthwith collect, receive, appropriate and realize upon the Collateral, or any part thereof, or consent to the use by the Guarantor of any cash collateral arising in respect of the Collateral on such terms as the Collateral Agent deems reasonable, and/or may forthwith sell, lease, assign, give an option or options to purchase or otherwise dispose of and deliver, or acquire by credit bid on behalf of the Lenders, the Collateral or any part thereof (or contract to do any of the foregoing), in one or more parcels at public or private sale or sales, at any exchange, broker's board or office of the Collateral Agent or any Secured Party or elsewhere, upon such terms and conditions as it may deem advisable and at such prices as it may deem best, for cash or on credit or for future delivery, all without assumption of any credit risk. The Collateral Agent or any Secured Party shall have the right upon any such public sale or sales, and, to the extent permitted by law, upon any such private sale or sales, to purchase the whole or any part of the Collateral so sold, free of any right or equity of redemption in any Guarantor, which right or equity is hereby waived and released. The Administrative Agent or Collateral Agent shall apply the net proceeds of any action taken by it pursuant to this Section 11.01 and the other corresponding provisions set forth in the other Loan Documents pursuant to Section 11.02 below. To the extent permitted by applicable law, each Guarantor waives all claims, damages and demands it may acquire against the Administrative Agent or any Secured Party arising out of the exercise by them of any rights hereunder, except abuse of right and fraud. If any notice of a proposed sale or other disposition of Collateral shall be required by law, such notice shall be deemed reasonable and proper if given at least ten (10) days before such sale or other disposition.

Section 11.02 Application of Funds. After the exercise of remedies provided for above (or after the Loans have automatically become immediately due and payable and the LC Exposure has automatically been required to be Cash Collateralized as set forth above) and/or during any Liquidity Period and/or during any period in which any Reinstated Prepetition Obligations exist, but in any event subject to the terms of the Applicable DIP Order (including without limitation, prior to the occurrence of the DIP Term Loan Closing Date, the Administrative Agent remitting all proceeds of Collateral or all other amounts received on account of the Obligations, in each case, to the Prepetition Agent for application to the Prepetition Obligations) and subject in all respects to the last paragraph hereof:

(a) any amounts received on account of the Obligations (other than proceeds of the Collateral) shall, subject to the provisions of Sections 2.11 and 2.13(j), be applied ratably in the following order (x) *first*, prior to the occurrence of the DIP Term Loan Closing Date, to the Prepetition Obligations (including, for the avoidance of doubt, any Prepetition Hedging Obligations) in accordance with the Prepetition Credit Agreement until such Prepetition Obligations, fees and all other expenses or amounts shall have been paid in full in cash and (y) *second*, by the Administrative Agent, separately in respect of each Facility, in the following order:

> First, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization, if any, including, without limitation, compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith;
>
> Second, to the payment of all other reasonable and documented costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties (other than the DIP Term Lenders) in connection therewith (other than in respect of Secured Bank Product Obligations), in each case, to the extent required to be reimbursed pursuant to Section 13.01;
>
> Third, to interest then due and payable on the Swingline Loans;

Fourth, to the principal balance of the Swingline Loans outstanding until the same has been prepaid in full;

Fifth, to interest then due and payable on Revolving Loans and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Sixth, to Cash Collateralize all LC Exposures (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) *plus* any accrued and unpaid interest thereon;

Seventh, to the principal balance of Revolving Borrowings then outstanding and all Obligations on account of Noticed Hedges with Secured Parties, *pro rata*;

Eighth, to all other Obligations (other than DIP Term Obligations) *pro rata*;

Ninth, to the payment in full of the Qualified Reinstated Prepetition Obligations;

Tenth, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization, if any, including, without limitation, compensation to the DIP Term Lenders and their agents and counsel, and all expenses, liabilities and advances made or incurred by the DIP Term Lenders in connection therewith, in each case, to the extent required to be reimbursed pursuant to Section 13.01;

Eleventh, to interest then due and payable on DIP Term Loans and other amounts due pursuant to Sections 3.01, 3.02 and 5.01

Twelfth, to the principal balance of DIP Term Loans then outstanding, *pro rata*;

Thirteenth, to the Excess Obligations;

Fourteenth, to the Reinstated Prepetition Obligations (other than the Qualified Reinstated Prepetition Obligations); and

Fifteenth, the balance, if any, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

Amounts used to Cash Collateralize the aggregate undrawn amount of Letters of Credit pursuant to clause Sixth above shall be applied to satisfy drawings under such Letters of Credit as they occur. If any amount remains on deposit as Cash Collateral after all Letters of Credit have either been fully drawn or expired, such remaining amount shall be applied to the other Obligations, if any, in the order set forth above. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.

In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Fifteenth of this Section 11.02(a), the Loan Parties shall remain liable for any deficiency.

(b) any proceeds of U.S. Collateral (including any distributions of cash, securities or other property of any Debtor) received by the Administrative Agent shall be applied ratably in the following order (x) *first*, prior to the occurrence of the DIP Term Loan Closing Date, to the Prepetition Obligations (including, for the avoidance of doubt, any Prepetition Hedging Obligations) in accordance with the Prepetition Credit Agreement until such Prepetition Obligations, fees and all other expenses or amounts shall have been paid in full in cash and (y) *second*, ratably in the following order:

First, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith due from the U.S. Borrowers;

Second, to the payment of all other reasonable and documented costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties (other than the DIP Term Lenders) in connection therewith (other than in respect of Secured Bank Product Obligations or the Guarantee by the U.S. Borrowers of the Foreign Loan Parties) due from the U.S. Borrowers, in each case to the extent required to be reimbursed pursuant to Section 13.01;

Third, to interest then due and payable on the Swingline Loans made to the U.S. Borrowers;

Fourth, to the principal balance of the Swingline Loans outstanding and made to the U.S. Borrowers until the same has been prepaid in full;

Fifth, to interest then due and payable on Revolving Loans made to the U.S. Borrowers under the North American Revolving Facility and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Sixth, to Cash Collateralize all North American LC Exposures in respect of the U.S. Borrowers (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) *plus* any accrued and unpaid interest thereon;

Seventh, to the principal balance of Revolving Borrowings made to the U.S. Borrowers under the North American Revolving Facility then outstanding, *pro rata*;

Eighth, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent and its agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent in connection therewith due from the Foreign Loan Parties;

Ninth, to the payment of all other reasonable and documented costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured

Parties in connection therewith (other than in respect of Secured Bank Product Obligations) due from the Foreign Loan Parties, in each case to the extent required to be reimbursed pursuant to Section 13.01;

Tenth, to interest then due and payable on the Swingline Loans made to the Swiss Borrower;

Eleventh, to the principal balance of the Swingline Loans made to the Swiss Borrower outstanding until the same has been prepaid in full;

Twelfth, to interest then due and payable on Revolving Loans made to the Swiss Borrower and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Thirteenth, to Cash Collateralize all LC Exposures in respect of the Swiss Borrower (in each case, to the extent not otherwise Cash Collateralized pursuant to the terms hereof) plus any accrued and unpaid interest thereon;

Fourteenth, to the principal balance of Revolving Borrowings made to the Swiss Borrower then outstanding and all Obligations of the Foreign Loan Parties on account of Noticed Hedges with Secured Parties, *pro rata*;

Fifteenth, to all other Obligations (other than the DIP Term Obligations) *pro rata*;

Sixteenth, the Qualified Reinstated Prepetition Obligations;

Seventeenth, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization, if any, including, without limitation, compensation to the DIP Term Lenders and their agents and counsel, and all expenses, liabilities and advances made or incurred by the DIP Term Lenders in connection therewith, in each case, to the extent required to be reimbursed pursuant to Section 13.01;

Eighteenth, to interest then due and payable on DIP Term Loans and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Nineteenth, to the principal balance of DIP Term Loans then outstanding, *pro rata*;

Twentieth, to the Excess Obligations;

Twenty-first, to the Reinstated Prepetition Obligations (other than the Qualified Reinstated Prepetition Obligations); and

Twenty-second, the balance, if any, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Twenty-second of this Section 11.02(b), the Loan Parties shall remain liable for any deficiency. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum Secured Bank Product Obligations last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have

no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.

(c) any proceeds of Foreign Collateral received by the Administrative Agent shall be applied ratably in the following order (x) *first*, prior to the occurrence of the DIP Term Loan Closing Date, to the Prepetition Obligations (including, for the avoidance of doubt, any Prepetition Hedging Obligations) in accordance with Section 11.02(c) of the Prepetition Credit Agreement but only to the extent any Foreign Obligations (as defined in the Prepetition Credit Agreement and including, for the avoidance of doubt, any Prepetition Hedging Obligations) and any fees and all other expenses or amounts relating to such Foreign Obligations (as defined in the Prepetition Credit Agreement and including, for the avoidance of doubt, any Prepetition Hedging Obligations) shall have been paid in full in cash and without giving effect to any of the other clauses of Section 11.02(c) of the Prepetition Credit Agreement requiring the application of such proceeds towards any other Prepetition Obligations and (y) *second*, ratably in the following order:

First, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent, Collateral Agent and their agents and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith due from the Foreign Loan Parties;

Second, to the payment of all other reasonable and documented costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties (other than the DIP Term Lenders) in connection therewith (other than in respect of Secured Bank Product Obligations) due from the Foreign Loan Parties to the extent required to be reimbursed pursuant to Section 13.01;

Third, to interest then due and payable on the Swingline Loans made to the Swiss Borrower;

Fourth, to the principal balance of the Swingline Loans outstanding and made to the Swiss Borrower until the same has been prepaid in full;

Fifth, to interest then due and payable on Revolving Loans made to the Swiss Borrower and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Sixth, to Cash Collateralize all LC Exposures in respect of the Swiss Borrower (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) *plus* any accrued and unpaid interest thereon;

Seventh, to the principal balance of Revolving Borrowings made to the Swiss Borrower then outstanding and all Obligations of the Foreign Loan Parties on account of Noticed Hedges with Secured Parties, *pro rata*;

Eighth, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization including, without limitation, compensation to the Administrative Agent, Collateral Agent and their agents

and counsel, and all expenses, liabilities and advances made or incurred by the Administrative Agent and Collateral Agent in connection therewith due from the U.S. Loan Parties;

Ninth, to the payment of all other reasonable and documented costs and out-of-pocket expenses of such sale, collection or other realization including, without limitation, costs and expenses and all costs, liabilities and advances made or incurred by the other Secured Parties in connection therewith (other than in respect of Secured Bank Product Obligations or the Guarantee by the U.S. Loan Parties of the Obligations of the Foreign Loan Parties) due from the U.S. Loan Parties to the extent required to be reimbursed pursuant to Section 13.01;

Tenth, [reserved];

Eleventh, to interest then due and payable on Revolving Loans made to the U.S. Borrowers and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Twelfth, to Cash Collateralize all LC Exposures in respect of the U.S. Borrowers (to the extent not otherwise Cash Collateralized pursuant to the terms hereof) plus any accrued and unpaid interest thereon;

Thirteenth, to the principal balance of Revolving Borrowings made to the U.S. Borrowers then outstanding, *pro rata*;

Fourteenth, to all other Obligations (other than DIP Term Obligations) *pro rata*;

Fifteenth, to the Qualified Reinstated Prepetition Obligations;

Sixteenth, to the payment of all reasonable and documented costs and out-of-pocket expenses, fees, commissions and taxes of such sale, collection or other realization, if any, including, without limitation, compensation to the DIP Term Lenders and their agents and counsel, and all expenses, liabilities and advances made or incurred by the DIP Term Lenders in connection therewith, in each case, to the extent required to be reimbursed pursuant to Section 13.01;

Seventeenth, to interest then due and payable on DIP Term Loans and other amounts due pursuant to Sections 3.01, 3.02 and 5.01;

Eighteenth, to the principal balance of DIP Term Loans then outstanding, *pro rata*;

Nineteenth, to the Excess Obligations;

Twentieth, to the Reinstated Prepetition Obligations (other than the Qualified Reinstated Prepetition Obligations); and

Twenty-first, the balance, if any, to the Person lawfully entitled thereto (including the applicable Loan Party or its successors or assigns).

In the event that any such proceeds are insufficient to pay in full the items described in clauses First through Twenty-first of this Section 11.02(c), the Loan Parties shall remain liable for any deficiency. Amounts distributed with respect to any Secured Bank Product Obligations shall be the lesser of the maximum

Secured Bank Product Obligations last reported to the Administrative Agent or the actual Secured Bank Product Obligations as calculated by the methodology reported to the Administrative Agent for determining the amount due. The Administrative Agent shall have no obligation to calculate the amount to be distributed with respect to any Secured Bank Product Obligations, and may request a reasonably detailed calculation of such amount from the applicable Secured Party. If a Secured Party fails to deliver such calculation within five (5) days following request by the Administrative Agent, the Administrative Agent may assume the amount to be distributed is zero.

Excluded Swap Obligations with respect to any Guarantor shall not be paid with amounts received from such Guarantor or its assets, but appropriate adjustments shall be made with respect to payments from other Loan Parties to preserve the allocation to Obligations otherwise set forth above in this Section.

Notwithstanding anything set forth above, if the Aggregate First Out Obligations exceed the Aggregate First Out Obligation Cap, any DIP ABL Obligations in excess of such amount, together with all accrued interest or fees in respect of such excess amount (collectively, the "Excess Obligations") shall only be paid pursuant to the applicable waterfall provisions above.

ARTICLE 12 THE ADMINISTRATIVE AGENT

Section 12.01 Appointment and Authorization.

(a) Each of the Lenders hereby irrevocably appoints JPMCB to act on its behalf as the Administrative Agent hereunder and under the other Loan Documents and authorizes the Administrative Agent to take such actions on its behalf and to exercise such powers as are delegated to the Administrative Agent by the terms hereof or thereof, together with such actions and powers as are reasonably incidental thereto. The provisions of this Article 12 (other than Sections 12.08, 12.10 and 12.11) are solely for the benefit of the Administrative Agent, the Issuing Banks and the Lenders, and neither the Lead Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. At the request of the Administrative Agent, a Lender that cannot authorize or empower, or has not authorized or empowered, the Administrative Agent to act on its behalf, irrevocably undertakes before the Administrative Agent and the other Lenders, to appear and execute with the Administrative Agent to enable the Administrative Agent to exercise any right, power, authority or discretion vested in it as Administrative Agent pursuant to this Agreement and to execute any document or instrument.

(b) Each of the Lenders (on behalf of itself and its Affiliates, including in its capacity as Secured Bank Product Provider) hereby irrevocably appoints and authorizes the Collateral Agent to act as the agent and, to the extent relevant, security trustee of such Lender hereunder and under the other Loan Documents for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any Loan Party to secure any of the Obligations, together with such powers and discretion as are reasonably incidental thereto, it being understood that the provisions of this Article 12 apply to the Collateral Agent in its capacity as such and references to Administrative Agent in the rest of this Article 12 shall be interpreted accordingly to include references to the Collateral Agent (including in the Collateral Agent's capacity as trustee of any trust under the Security Documents). The Collateral Agent and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent or Collateral Agent pursuant to Section 12.02 for purposes of holding or enforcing any Lien on the Collateral (or any portion thereof) granted under the Security Documents, or for exercising any rights and remedies thereunder at the direction of the Administrative Agent, shall be entitled to the benefits of all provisions of this Article 12 and Article 13 (including Section 13.01, as though such co-agents, sub-agents and attorneys-in-fact were the "Collateral Agent" or "security trustee" under the Loan Documents) as if set forth in full herein with respect thereto. Without limiting the generality of the foregoing, the Lenders hereby expressly authorize the Administrative Agent and/or the Collateral Agent to execute any and all documents (including releases) with respect to the

Collateral and the rights of the Guaranteed Creditors with respect thereto, as contemplated by and in accordance with the provisions of this Agreement and the Security Documents and acknowledge and agree that any such action by any Agent shall bind the Lenders. Without limiting any other rights of the Collateral Agent under this Agreement or any other Loan Documents, in relation to the Swiss Security Documents the following shall apply:

(i) the Collateral Agent holds:

(1) any security constituted by such Swiss Security Document (but only in relation to an assignment or any other non-accessory (*nicht akzessorische*) security);

(2) the benefit of this paragraph (i); and

(3) any proceeds of such security;

as fiduciary (*treuhänderisch*) in its own name but for the account of all relevant Secured Parties which have the benefit of such security in accordance with the Loan Documents and the respective Swiss Security Document;

(ii) each present and future Secured Party hereby authorizes the Collateral Agent:

(1) acting for itself and in the name and for the account of such Secured Party to accept as its direct representative (*direkter Stellvertreter*) any Swiss law pledge or any other Swiss law accessory (*akzessorische*) security made or expressed to be made to such Secured Party in relation to the Swiss Security Documents, to hold, administer and, if necessary, enforce any such security on behalf of each relevant Secured Party which has the benefit of such security;

(2) to agree as its direct representative (*direkter Stellvertreter*) to amendments and alterations to any Swiss Security Document which creates a pledge or any other Swiss law accessory (*akzessorische*) security;

(3) to effect as its direct representative (*direkter Stellvertreter*) any release of a security interest created under a Swiss Security Document in accordance with this Agreement; and

(4) to exercise as its direct representative (*direkter Stellvertreter*) such other rights granted to the Collateral Agent hereunder, under the relevant Swiss Security Document;

(iii) the Collateral Agent, when acting in its capacity as creditor of each Parallel Debt Obligation holds:

(1) any Swiss law pledge or any other Swiss law accessory (akzessorische) security;

(2) any proceeds of such security; and

(3) the benefit of this paragraph and of the Parallel Debt,

as creditor in its own right but for the benefit of the Secured Parties in accordance with this Agreement.

(c) The Lenders hereby authorize the Administrative Agent and the Collateral Agent to enter into any arrangement or supplement thereto permitted under this Agreement without any further consent by any Lender and any such arrangement or supplemented thereto shall be binding upon the Lenders.

Section 12.02 Delegation of Duties. The Administrative Agent may perform any and all of its duties and exercise its rights and powers hereunder or under any other Loan Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article 12 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent and any such sub-agent, and shall apply to their respective activities in connection with the syndication of the credit facilities provided for herein as well as activities as Administrative Agent.

Section 12.03 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing; additionally, each Lender agrees that it will not assert any claim against the Administrative Agent based on an alleged breach of fiduciary duty by the Administrative Agent in connection with this Agreement and/or the transactions contemplated hereby;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Loan Documents that the Administrative Agent is required to exercise as directed in writing by the Required Lenders or, in the case of the Revolving Credit Facility Matters, the Required Revolving Lenders (or, in each case, such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Loan Documents); provided that the Administrative Agent shall not be required to take any action that, in its opinion or the opinion of its counsel, may expose the Administrative Agent to liability or that is contrary to any Loan Document or applicable law;

(c) shall not, except as expressly set forth herein and in the other Loan Documents, have any duty to disclose, and shall not be liable for the failure to disclose, any information relating to the Lead Borrower or any of its Affiliates that is communicated to or obtained by the Person serving as the Administrative Agent or any of its Affiliates in any capacity;

(d) shall not be liable to any Lender for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders or, in the case of the Revolving Credit Facility Matters, the Required Revolving Lenders (or, in each case, such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Article 11 and Section 13.12) or (ii) in the absence of its own gross negligence, bad faith or willful misconduct as determined by a court of competent jurisdiction in a final non-appealable judgment. The Administrative Agent shall be deemed not to have knowledge of any (i) notice of any of the events or circumstances set forth or described in Section 9.05 unless and until written notice thereof stating that it is a "notice under Section 9.05" in respect of this Agreement and identifying the specific clause under said Section is given to the Administrative Agent by the Lead Borrower, or (ii) notice of any Default or Event of Default unless and until written notice thereof (stating that it is a "notice of Default" or a "notice of an Event of Default") is given to the Administrative Agent by the Lead Borrower or a Lender;

(e) shall not be required to account to any Lender for any sum or the profit element of any sum received by the Administrative Agent for its own account;

(f) shall not be responsible for or have any duty to ascertain or inquire into (i) any statement, warranty or representation made in or in connection with this Agreement or any other Loan Document, (ii) the contents of any certificate, report or other document delivered hereunder or thereunder or in connection herewith or therewith, (iii) the performance or observance of any of the covenants, agreements or other terms or conditions set forth herein or therein or the occurrence of any Default or Event of Default, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document (including, for the avoidance of doubt, in connection with the Administrative Agent's reliance on any Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page) or any other agreement, instrument or document, or the creation, perfection or priority of any Lien purported to be created by the Security Documents, (v) the value or the sufficiency of any Collateral, or (vi) the satisfaction of any condition set forth in Article 6 or elsewhere herein, other than to confirm receipt of items (which on their face purport to be such items) expressly required to be delivered to the Administrative Agent. Notwithstanding anything herein to the contrary, the Administrative Agent shall not be liable for, or be responsible for any claim, liability, loss, cost or expense suffered by the Borrowers, any subsidiary, any Lender or any Issuing Bank as a result of, any determination of the Revolving Exposure, any of the component amounts thereof or any portion thereof attributable to each Lender or Issuing Bank, or any Spot Rate or Dollar Equivalent; and

Section 12.04 Reliance by Administrative Agent. The Administrative Agent shall be entitled to rely upon, and shall not incur any liability for relying upon, any notice, request, certificate, consent, statement, instrument, document or other writing (including any electronic message, Internet or intranet website posting or other distribution) believed by it to be genuine and to have been signed, sent or otherwise authenticated by the proper Person. The Administrative Agent also may rely upon any statement made to it orally or by telephone and believed by it to have been made by the proper Person, and shall not incur any liability for relying thereon. In determining compliance with any condition hereunder to the making of a Loan, that by its terms must be fulfilled to the satisfaction of a Lender, the Administrative Agent may presume that such condition is satisfactory to such Lender unless the Administrative Agent shall have received notice to the contrary from such Lender prior to the making of such Loan. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable, in the absence of its own gross negligence, bad faith or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) in selecting such counsel, accountants or other experts, for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 12.05 No Other Duties, Etc. Anything herein to the contrary notwithstanding, none of the Lead Arrangers, the Co-Syndication Agents or the Documentation Agent shall have any powers, duties or responsibilities under this Agreement or any of the other Loan Documents, except in its capacity, as applicable, as the Administrative Agent or a Lender hereunder.

Section 12.06 Non-reliance on Administrative Agent and Other Lenders. (a) Each Lender and each Issuing Bank represents and warrants that (i) the Loan Documents set forth the terms of a commercial lending facility, (ii) it is engaged in making, acquiring or holding commercial loans and in providing other facilities set forth herein as may be applicable to such Lender or Issuing Bank, in each case in the ordinary course of business, and not for the purpose of purchasing, acquiring or holding any other type of financial instrument (and each Lender and each Issuing Bank agrees not to assert a claim in contravention of the foregoing), (iii) it has, independently and without reliance upon the Administrative Agent, any Lead Arranger, any Co-Syndication Agent, any Documentation Agent or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information as it has

deemed appropriate, made its own credit analysis and decision to enter into this Agreement as a Lender, and to make, acquire or hold Loans hereunder and (iv) it is sophisticated with respect to decisions to make, acquire and/or hold commercial loans and to provide other facilities set forth herein, as may be applicable to such Lender or such Issuing Bank, and either it, or the Person exercising discretion in making its decision to make, acquire and/or hold such commercial loans or to provide such other facilities, is experienced in making, acquiring or holding such commercial loans or providing such other facilities. Each Lender and each Issuing Bank also acknowledges that it will, independently and without reliance upon the Administrative Agent, any Lead Arranger, any Co-Syndication Agent, any Documentation Agent or any other Lender or Issuing Bank, or any of the Related Parties of any of the foregoing, and based on such documents and information (which may contain material, non-public information within the meaning of the United States securities laws concerning the Lead Borrower and its Affiliates) as it shall from time to time deem appropriate, continue to make its own decisions in taking or not taking action under or based upon this Agreement, any other Loan Document or any related agreement or any document furnished hereunder or thereunder.

(b) Each Lender, by delivering its signature page to this Agreement on the Effective Date, or delivering its signature page to an Assignment and Assumption or any other Loan Document pursuant to which it shall become a Lender hereunder, shall be deemed to have acknowledged receipt of, and consented to and approved, each Loan Document and each other document required to be delivered to, or be approved by or satisfactory to, the Administrative Agent or the Lenders on the DIP Closing Date.

Section 12.07 Indemnification by the Lenders. To the extent that the Borrowers for any reason fail to pay any amount required under Section 13.01(a) to be paid by them to the Administrative Agent or the Collateral Agent (or any sub-agent thereof), or any Related Party of any of the foregoing, each Lender severally agrees to pay to the Administrative Agent or the Collateral Agent (or any such sub-agent) or such Related Party, as the case may be, such Lender's *pro rata* share (based on the amount of then outstanding Loans held by each Lender or, if the Loans have been repaid in full, based on the amount of outstanding Loans held by each Lender immediately prior to such repayment in full) of (determined as of the time that the applicable unreimbursed expense or indemnity payment is sought) of such unpaid amount; provided that the unreimbursed expense or indemnified loss, claim, damage, liability or related expense, as the case may be, was incurred by or asserted against the Administrative Agent or the Collateral Agent (or any such sub-agent) in its capacity as such, or against any Related Party of any of the foregoing acting for the Administrative Agent or the Collateral Agent (or any such sub-agent) in connection with such capacity; provided further that no Lender shall be liable for any of the foregoing to the extent any of the foregoing is found in a final non-appealable judgment by a court of competent jurisdiction to have resulted from the gross negligence or willful misconduct of the Administrative Agent or the Collateral Agent. The obligations of the Lenders under this Section 12.07 are subject to the provisions of Section 5.01.

Section 12.08 Rights as a Lender. The Person serving as the Administrative Agent hereunder shall have the same rights and powers in its capacity as a Lender as any other Lender and may exercise the same as though it were not the Administrative Agent and the term "Lender" or "Lenders" shall, unless otherwise expressly indicated or unless the context otherwise requires, include the Person serving as the Administrative Agent hereunder in its individual capacity. Such Person and its Affiliates may accept deposits from, lend money to, own securities of, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with the Lead Borrower or any subsidiary or other Affiliate thereof as if such Person were not the Administrative Agent hereunder and without any duty to account therefor to the Lenders.

Section 12.09 Administrative Agent May File Proofs of Claim; Credit Bidding. In case of the pendency of any proceeding under any Debtor Relief Law or any other judicial proceeding relative to any Loan Party, the Administrative Agent (irrespective of whether the principal of any Loan or LC Exposure

shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans, LC Exposure and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders, the Issuing Banks and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders, the Issuing Banks and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders, the Issuing Banks and the Administrative Agent under Article 6 and Section 13.01) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, interim receiver, assignee, trustee, monitor, liquidator, examiner, sequestrator, judicial manager, or other similar official in any such judicial proceeding is hereby authorized by each Lender and each Issuing Bank to make such payments to the Administrative Agent and, if the Administrative Agent shall consent to the making of such payments directly to the Lenders and the Issuing Banks, to pay to the Administrative Agent any amount due for the reasonable compensation, expenses, disbursements and advances of the Administrative Agent and its agents and counsel, and any other amounts due the Administrative Agent under Article 6 and Section 13.01.

Nothing contained herein shall be deemed to authorize the Administrative Agent to authorize or consent to or accept or adopt on behalf of any Lender or any Issuing Bank any plan of reorganization, arrangement, adjustment or composition affecting the Obligations or the rights of any Lender or any Issuing Bank to authorize the Administrative Agent to vote in respect of the claim of any Lender or any Issuing Bank or in any such proceeding.

The Secured Parties hereby irrevocably authorize the Administrative Agent, at the direction of the Required Revolving Lenders (with respect to a credit bid of the DIP ABL Obligations) and/or the Required DIP Term Lenders (with respect to a credit bid of the DIP Term Obligations), as applicable, to credit bid all or any portion of the DIP ABL Obligations or the DIP Term Obligations, as applicable (including accepting some or all of the Collateral in satisfaction of some or all of the Obligations pursuant to a deed in lieu of foreclosure or otherwise) and in such manner purchase (either directly or through one or more acquisition vehicles) all or any portion of the Collateral (a) at any sale or transfer thereof conducted under the provisions of the Bankruptcy Code of the United States, including under Sections 363, 725, or 1123 of the Bankruptcy Code of the United States, or any other Debtor Relief Laws or similar laws in any other jurisdictions to which a Loan Party is subject or (b) at any other sale or foreclosure or acceptance of collateral in lieu of debt conducted by (or with the consent or at the direction of) the Administrative Agent (whether by judicial action or otherwise) in accordance with any applicable law. In connection with any such credit bid and purchase (i) the DIP ABL Obligations shall be entitled to be, and shall be, credit bid on a ratable basis at the direction of the Required Revolving Lenders, (ii) the DIP Term Obligations shall be entitled to be, and shall be, credit bid on a ratable basis at the direction of the Required DIP Term Lenders, in each case, subject to the immediately succeeding clause (iii) and (iii) the DIP Term Obligations shall not be credit bid in connection with the purchase of any Collateral unless Full Senior Obligation Repayment, in each case, shall occur at the closing of such credit bid. Any credit bid described in the previous sentence shall be credit bid on a ratable basis (with Obligations with respect to contingent or unliquidated claims receiving contingent interests in the acquired assets on a ratable basis that would vest upon the liquidation of such claims in an amount proportional to the liquidated portion of the contingent claim amount used in allocating the contingent interests) in the asset or assets so purchased (or in the Equity Interests or debt instruments of the acquisition vehicle or vehicles that are used to consummate such purchase). In connection with any such bid (i) the Administrative Agent shall be authorized to form one or more

acquisition vehicles to make a bid, (ii) the Administrative Agent shall be authorized to adopt documents providing for the governance of the acquisition vehicle or vehicles (provided that any actions by the Administrative Agent with respect to such acquisition vehicle or vehicles, including any disposition of the assets or Equity Interests thereof shall be governed, directly or indirectly, by the vote of the Required Revolving Lenders or Required DIP Term Lenders, as applicable, irrespective of the termination of this Agreement and without giving effect to the limitations on actions by the Required Lenders contained in clauses (a)(i) through (a)(v) of Section 13.04 of this Agreement), and (iii) to the extent that Obligations that are assigned to an acquisition vehicle are not used to acquire Collateral for any reason (as a result of another bid being higher or better, because the amount of Obligations assigned to the acquisition vehicle exceeds the amount of debt credit bid by the acquisition vehicle or otherwise), such Obligations shall automatically be reassigned to the Lenders *pro rata* and the Equity Interests and/or debt instruments issued by any acquisition vehicle on account of the Obligations that had been assigned to the acquisition vehicle shall automatically be cancelled, without the need for any Secured Party or any acquisition vehicle to take any further action.

Section 12.10 Resignation of the Agents.

(a) The Administrative Agent (including as Collateral Agent) and the Collateral Agent may at any time give notice of its resignation to the Lenders and the Borrowers. Upon receipt of any such notice of resignation, the Required Lenders shall have the right, with the Lead Borrower's consent (other than during the existence of any Event of Default), to appoint a successor, which shall be a bank with an office in the United States, or an Affiliate of any such bank with an office in the United States or, in the case of a Collateral Agent, such other third party providing agency services as may be acceptable to the Required Lenders and consented to by the Lead Borrower (other than during the existence of any Event of Default). If no such successor shall have been so appointed by the Required Lenders (and consented to by the Lead Borrower, to the extent so required) and shall have accepted such appointment within thirty (30) days after such retiring Agent gives notice of its resignation, then such retiring Agent may, with the Lead Borrower's consent (other than during the existence of any Event of Default), on behalf of the Lenders, appoint a successor Agent meeting the qualifications set forth above; provided that if the Administrative Agent shall notify the Borrowers and the Lenders that no qualifying Person has accepted such appointment within such period, then such resignation shall nonetheless become effective in accordance with such notice and (a) such retiring Agent shall be discharged from its duties and obligations hereunder and under the other Loan Documents (except that in the case of any collateral security held by such retiring Agent on behalf of the Lenders under any of the Loan Documents, then such retiring Agent shall continue to hold such collateral security solely for purposes of maintaining the Secured Parties' security interest thereon until such time as a successor Agent is appointed) and (b) all payments, communications and determinations provided to be made by, to or through such retiring Agent shall instead be made by or to each Lender directly, until such time as the Required Lenders (with the consent of the Lead Borrower, to the extent so required) appoint a successor Agent as provided for above in this Section 12.10. Upon the acceptance of a successor's appointment hereunder (which, in the case of any third party providing services as a Collateral Agent hereunder may require the entry into such customary documentation reasonably satisfactory to the Lead Borrower as such third party provider shall require, including without limitation in certain jurisdictions a security trust deed or similar arrangement), such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of such retiring Agent, and such retiring Agent shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents (if not already discharged therefrom as provided above in this Section). After such retiring Agent's resignation hereunder and under the other Loan Documents (including without limitation pursuant to clause (c) below), the provisions of this Section 12 and Section 13.01 shall continue in effect for the benefit of such retiring Agent, its sub-agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while such retiring Agent was acting as an Agent hereunder.

(b) Any resignation by JPMCB as administrative agent pursuant to this Section 12.10 shall also constitute its resignation as lender of the Swingline Loans to the extent that JPMCB is acting in such capacity at such time. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, (i) such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring lender of the Swingline Loans and (ii) the retiring lender of the Swingline Loans shall be discharged from all of its duties and obligations hereunder or under the other Loan Documents.

(c) Upon the occurrence of (x) Full Senior Obligation Repayment or (y) the exercise of Purchase Option by the DIP Term Lenders, at the written request of the Required DIP Term Lenders, the Administrative Agent and the Collateral Agent shall resign and the Required DIP Term Lenders may appoint a successor reasonably satisfactory to the Lead Borrower (which consent shall not be required to the extent any Event of Default has occurred and is then continuing).

Section 12.11 Collateral Matters and Guarantee Matters. The Lenders and the other Secured Parties (by virtue of their acceptance of the benefits of the Loan Documents) authorize the Collateral Agent to release any Collateral or Guarantors in accordance with Section 13.18. The Administrative Agent and the Collateral Agent shall not be responsible for or have a duty to ascertain or inquire into any representation or warranty regarding the existence, value or collectability of the Collateral, the existence, priority or perfection of the Administrative Agent's and the Collateral Agent's Lien thereon, or any certificate prepared by any Loan Party in connection therewith, nor shall the Administrative Agent be responsible or liable to the Lenders for any failure to monitor or maintain any portion of the Collateral.

Section 12.12 Bank Product Providers. Each Secured Bank Product Provider, by delivery of a notice substantially in the form of Exhibit D to the Administrative Agent of such agreement, agrees to be bound by this Article 12. Each such Secured Bank Product Provider shall indemnify and hold harmless the Administrative Agent and the Collateral Agent, to the extent not reimbursed by the Loan Parties, against all claims that may be incurred by or asserted against the Administrative Agent and the Collateral Agent in connection with such provider's Secured Bank Product Obligations.

Section 12.13 Withholding Taxes. To the extent required by any applicable Requirement of Law, the Administrative Agent may withhold from any payment to any Lender an amount equivalent to any applicable withholding Tax. If the IRS or any authority of the United States or any other jurisdiction asserts a claim that the Administrative Agent did not properly withhold Tax from amounts paid to or for the account of any Lender for any reason (including because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify the Administrative Agent of a change in circumstances that rendered the exemption from, or reduction of, withholding Tax ineffective), such Lender shall indemnify the Administrative Agent (to the extent that the Administrative Agent has not already been reimbursed by any applicable Loan Party and without limiting the obligation of any applicable Loan Party to do so) fully for all amounts paid, directly or indirectly, by the Administrative Agent as Tax or otherwise, including penalties, fines, additions to Tax and interest, together with all expenses incurred, including legal expenses, allocated staff costs and any out of pocket expenses. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Section 12.13. For purposes of this Section 12.13, the term "Lender" shall include any Issuing Bank and the Swingline Lender. This Section 12.13 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

Section 12.14 Australian Security Trust Deed. Each Secured Party hereby:

(a) Upon the execution of the Australian Security Trust Deed, the Secured Parties appoint the Australian Security Trustee under the terms of the Australian Security Trust Deed to act as its trustee under

and in relation to the Australian Security Documents and to hold the assets subject to the security thereby created as trustee for the Secured Creditors on trust and on the terms contained in the Australian Security Documents and each Secured Creditor authorizes the Australian Security Trustee under the terms of the Australian Security Trust Deed to exercise such rights, remedies, powers and discretions as are specifically delegated to Australian Security Trustee by the terms of the Australian Security Documents, together with all such rights, remedies, powers and discretions as are incidental thereto and Australian Security Trustee hereby accepts that appointment.

(b) Each Secured Party:

(i) acknowledges that they are aware of, and consent to, the terms of the Australian Security Trust Deed;

(ii) agrees to comply with and be bound by the Australian Security Trust Deed as a Beneficiary (as that term is defined in the Australian Security Trust Deed);

(iii) acknowledges that it has received a copy of the Australian Security Trust Deed together with the other information which it has required in connection with the Australian Security Trust Deed and this Agreement;

(iv) without limiting the general application of paragraph (i) above, acknowledges and agrees as specified in clause 5.12 (Independent decisions by Beneficiaries) of the Australian Security Trust Deed and provides the indemnities as specified in clause 10.3 (Indemnity by Beneficiaries) of the Australian Security Trust Deed; and

(v) without limiting the general application of paragraph (i) above, for consideration received, irrevocably appoints as its attorney each person who under the terms of the Australian Security Trust Deed is appointed an attorney of a Beneficiary (as defined in the Australian Security Trust Deed) on the same terms and for the same purposes as contained in the Australian Security Trust Deed.

(c) This Section is executed as a deed poll in favor of the Australian Security Trustee and each Beneficiary (as defined in the Australian Security Trust Deed) from time to time. The law of New South Wales governs this Section 12.14 and the parties submit to the non-exclusive jurisdiction of the courts of New South Wales and of the Commonwealth of Australia in relation to this Section 12.14.

Section 12.15 Parallel Debt Undertaking.

(a) In order to ensure the continuing validity and enforceability of the Liens expressed to be created under the Security Documents governed by Dutch law, each Loan Party hereby irrevocably and unconditionally undertakes (the resulting liabilities and obligations under that undertaking in respect of any amount, a "Parallel Debt Obligation" and in respect of all of them, the "Parallel Debt Obligations") to pay to the Collateral Agent amounts equal to, and in the currency of, all amounts from time to time due and payable by any Loan Party to any Secured Party under the Obligations as and when the same fall due for payment under the Obligations.

(b) Each Parallel Debt Obligation shall be separate from and independent of the corresponding Obligation, so that the Collateral Agent will have its own independent right to demand payment of the Parallel Debt Obligation.

(c) The Parallel Debt Obligations shall be owed to the Collateral Agent in its own name and not as agent or representative of the Secured Parties.

(d) Other than as set out in paragraph (e) below, the Parallel Debt Obligations shall not limit or affect the existence of the Obligations, for which the Secured Parties shall have an independent right to demand performance.

(e) The rights of the Secured Parties to receive payment of the Obligations are several from the rights of the Collateral Agent to receive payment of the Parallel Debt Obligations, provided that:

(i) payment by a Loan Party of its Parallel Debt Obligations in accordance with this Section 12.15 shall to the same extent decrease and discharge the corresponding Obligations owing to the Secured Parties; and

(ii) payment by a Loan Party of its Obligations in accordance with the Obligations shall to the same extent decrease and discharge the corresponding Parallel Debt Obligations.

Section 12.16 [reserved].

Section 12.17 [reserved].

Section 12.18 Certain ERISA Matters. (a) Each Lender (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of any Borrower or any other Loan Party, that at least one of the following is and will be true:

(i) such Lender is not using "plan assets" (within the meaning of the Plan Asset Regulations) of one or more Plans in connection with the Loans, the Letters of Credit or the Commitments,

(ii) the transaction exemption set forth in one or more PTEs, such as PTE 84-14 (a class exemption for certain transactions determined by independent qualified professional asset managers), PTE 95-60 (a class exemption for certain transactions involving insurance company general accounts), PTE 90-1 (a class exemption for certain transactions involving insurance company pooled separate accounts), PTE 91-38 (a class exemption for certain transactions involving bank collective investment funds) or PTE 96-23 (a class exemption for certain transactions determined by in-house asset managers), is applicable with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement,

(iii) (A) such Lender is an investment fund managed by a "Qualified Professional Asset Manager" (within the meaning of Part VI of PTE 84-14), (B) such Qualified Professional Asset Manager made the investment decision on behalf of such Lender to enter into, participate in, administer and perform the Loans, the Letters of Credit, the Commitments and this Agreement, (C) the entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement satisfies the requirements of sub-sections (b) through (g) of Part I of PTE 84-14 and (D) to the best knowledge of such Lender, the requirements of subsection (a) of Part I of PTE 84-14 are satisfied with respect to such Lender's entrance into, participation in, administration of and performance of the Loans, the Letters of Credit, the Commitments and this Agreement, or

(iv) such other representation, warranty and covenant as may be agreed in writing between the Administrative Agent, in its sole discretion, and such Lender.

(f) In addition, unless sub-clause (i) in the immediately preceding clause (a) is true with respect to a Lender or such Lender has not provided another representation, warranty and covenant as provided in sub-clause (iv) in the immediately preceding clause (a), such Lender further (x) represents and warrants, as of the date such Person became a Lender party hereto, to, and (y) covenants, from the date such Person became a Lender party hereto to the date such Person ceases being a Lender party hereto, for the benefit of, the Administrative Agent, the Lead Arrangers and their respective Affiliates, and not, for the avoidance of doubt, to or for the benefit of the Lead Borrower or any other Loan Party, that none of the Administrative Agent, the Lead Arrangers, any Co-Syndication Agent, the Documentation Agent or any of their respective Affiliates is a fiduciary with respect to the Collateral or the assets of such Lender (including in connection with the reservation or exercise of any rights by the Administrative Agent under this Agreement, any Loan Document or any documents related to hereto or thereto).

(g) The Administrative Agent, each Lead Arranger, each Co-Syndication Agent and the Documentation Agent hereby informs the Lenders that each such Person is not undertaking to provide investment advice or to give advice in a fiduciary capacity, in connection with the transactions contemplated hereby, and that such Person has a financial interest in the transactions contemplated hereby in that such Person or an Affiliate thereof (i) may receive interest or other payments with respect to the Loans, the Letters of Credit, the Commitments, this Agreement and any other Loan Documents (ii) may recognize a gain if it extended the Loans, the Letters of Credit or the Commitments for an amount less than the amount being paid for an interest in the Loans, the Letters of Credit or the Commitments by such Lender or (iii) may receive fees or other payments in connection with the transactions contemplated hereby, the Loan Documents or otherwise, including structuring fees, commitment fees, arrangement fees, facility fees, upfront fees, underwriting fees, ticking fees, agency fees, administrative agent or collateral agent fees, utilization fees, minimum usage fees, letter of credit fees, fronting fees, deal-away or alternate transaction fees, amendment fees, processing fees, term out premiums, banker's acceptance fees, breakage or other early termination fees or fees similar to the foregoing.

ARTICLE 13 MISCELLANEOUS

Section 13.01 Payment of Expenses, Etc.

(a) The Loan Parties hereby jointly and severally agree, from and after the DIP Closing Date, to: (i) pay all reasonable, documented and invoiced out-of-pocket costs and expenses of the Agents, the Prepetition Agent and Issuing Banks (limited, in the case of legal expenses, to the reasonable fees and disbursements of one primary counsel to all Agents, Prepetition Agent and Issuing Banks and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) and specifically including, but not limited to, special counsel to the Agents and Prepetition Agent as to the laws of Missouri) in connection with (w) the Chapter 11 Cases, (x) the preparation, execution and delivery of this Agreement and the other Loan Documents and the documents and instruments referred to herein and therein, (y) the administration hereof and thereof and any amendment, waiver or consent relating hereto or thereto (whether or not effective) and (z) their syndication efforts with respect to this Agreement and any registration fees; (ii) pay all reasonable, documented and invoiced out-of-pocket costs and expenses of the Agents, the Prepetition Agent, each Lender and each Issuing Bank (including court clerk fees (even if their intervention is not mandatory), court costs and any sworn translation costs and together with any applicable VAT) in connection with the enforcement of this Agreement and the other Loan Documents, the Prepetition Credit Agreement and the other Loan Documents (as defined in the Prepetition Credit Agreement) and the documents and instruments referred to herein and therein or in connection with any refinancing or restructuring of the credit arrangements provided under

this Agreement in the nature of a "work-out" or pursuant to any insolvency or bankruptcy proceedings (limited, in the case of legal expenses, to one primary counsel to all Agents, the Prepetition Agent, Lenders and Issuing Banks to be retained by the Administrative Agent and Prepetition Agent and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions) (specifically including, but not limited to, special counsel to the Agents and the Prepetition Agent as to the laws of Missouri) and, in the case of an actual or perceived conflict of interest where any Indemnified Person affected by such conflict informs the Lead Borrower of such conflict, of a single additional firm of counsel and, if reasonably necessary, one local counsel in any relevant jurisdiction (which may include a single firm of counsel acting in multiple jurisdictions), in each case for all similarly situated affected Indemnified Persons); and (iii) indemnify each Agent, the Prepetition Agent and each Lender, each Issuing Bank and their respective Affiliates, and the officers, directors, employees, agents, trustees, representatives and investment advisors of each of the foregoing (each, an "Indemnified Person") from and hold each of them harmless against any and all liabilities, obligations (including removal or remedial actions), losses, damages, penalties, claims, actions, judgments, suits, costs, expenses and disbursements (including reasonable attorneys' and consultants' fees and disbursements) incurred by, imposed on or assessed against any of them as a result of, or arising out of, or in any way related to, or by reason of, (a) any investigation, litigation or other proceeding (whether or not any Agent, the Prepetition Agent, any Issuing Bank or any Lender is a party thereto and whether or not such investigation, litigation or other proceeding is brought by or on behalf of any Loan Party) related to the Chapter 11 Cases, the entering into and/or performance of this Agreement, any other Loan Document or the Prepetition Credit Agreement or any other Loan Document (as defined in the Prepetition Credit Agreement), the issuance of any Letter of Credit or the proceeds of any Loans or Letters of Credit hereunder or the consummation of the Transaction or any other transactions contemplated herein or in any other Loan Document or the exercise of any of their rights or remedies provided herein or in the other Loan Documents, or (b) the actual or alleged presence of Hazardous Materials in the Environment relating in any way to any Real Property owned, leased or operated, at any time, by the Lead Borrower or any of its subsidiaries; the generation, storage, transportation, handling, Release or threat of Release of Hazardous Materials by the Lead Borrower or any of its subsidiaries at any location, whether or not owned, leased or operated by the Lead Borrower or any of its subsidiaries; the non-compliance by the Lead Borrower or any of its subsidiaries with any Environmental Law (including applicable permits thereunder) applicable to any Real Property; or any Environmental Claim asserted against the Lead Borrower, any of its subsidiaries or relating in any way to any Real Property at any time owned, leased or operated by the Lead Borrower or any of its subsidiaries, including, in each case, without limitation, the reasonable fees and disbursements of counsel and other consultants incurred in connection with any such investigation, litigation or other proceeding, in all cases, whether or not caused by or arising, in whole or in part, out of the comparative, contributory or sole negligence of the Indemnified Person (but excluding in each case (and each Indemnified Person, by accepting the benefits hereof, agrees to promptly refund or return any indemnity received hereunder to the extent it is later determined by a final, non-appealable judgment of a court of competent jurisdiction that such Indemnified Person is not entitled thereto) any losses, liabilities, claims, damages or expenses (i) to the extent incurred by reason of the gross negligence, bad faith or willful misconduct (as determined by a court of competent jurisdiction in a final non-appealable judgment) of the applicable Indemnified Person, any Affiliate of such Indemnified Person or any of their respective directors, officers, employees, representatives, agents, Affiliates, trustees or investment advisors, (ii) to the extent incurred by reason of any material breach of the obligations of such Indemnified Person under this Agreement, the other Loan Documents, the Prepetition Credit Agreement or the other Loan Documents (as defined in the Prepetition Credit Agreement) (in the case of each of preceding clauses (i) and (ii), as determined by a court of competent jurisdiction in a final and non-appealable decision) or (iii) that do not involve or arise from an act or omission by the Lead Borrower or Guarantors or any of their respective affiliates and is brought by an Indemnified Person (other than claims against any Agent or the Prepetition Agent solely in its capacity as such or in its fulfilling such role)). To the extent that the undertaking to indemnify, pay or hold harmless any Agent, the Prepetition Agent, any Issuing Bank or any Lender or other Indemnified Person set forth in

the preceding sentence may be unenforceable because it is violative of any law or public policy, the Loan Parties shall make the maximum contribution to the payment and satisfaction of each of the indemnified liabilities which is permissible under applicable law.

(b) No Agent, nor the Prepetition Agent nor any Indemnified Person shall be responsible or liable to any Loan Party or any other Person for (x) any determination made by it pursuant to this Agreement or any other Loan Document in the absence of gross negligence, bad faith or willful misconduct on the part of such Indemnified Person (in each case, as determined by a court of competent jurisdiction in a final and non-appealable judgment) or (y) any damages arising from the use by others of information or other materials obtained through electronic, telecommunications or other information transmission systems.

(c) No party hereto (and no Indemnified Person or any Subsidiary or Affiliate of any Borrower) shall be responsible to any other party hereto (or any Indemnified Person or any Subsidiary or Affiliate of any Borrower) for any indirect, special, exemplary, incidental, punitive or consequential damages (including, without limitation, any loss of profits, business or anticipated savings) which may be alleged as a result of this Agreement or any other Loan Document or the financing contemplated hereby; provided that nothing in this Section 13.01(c) shall limit the Loan Parties' indemnity obligations to the extent that such indirect, special, punitive or consequential damages are included in any claim by a third party unaffiliated with any Indemnified Person with respect to which the applicable Indemnified Person is entitled to indemnification under Section 13.01(a).

(d) This Section 13.01 shall not apply to any Taxes (other than Taxes that represent liabilities, obligations, losses, damages, penalties, actions, costs, expenses and disbursements arising from a non-Tax claim).

Section 13.02 Right of Set-off.

(a) In addition to any rights now or hereafter granted under applicable law or otherwise, and not by way of limitation of any such rights, upon the occurrence and during the continuance of an Event of Default, the Administrative Agent, each Issuing Bank and each Lender is hereby authorized at any time or from time to time, without presentment, demand, protest or other notice of any kind to any Loan Party or to any other Person, any such notice being hereby expressly waived, to set off and to appropriate and apply any and all deposits (general or special) (other than accounts used exclusively for payroll, payroll taxes, fiduciary and trust purposes, and employee benefits) and any other Indebtedness at any time held or owing by the Administrative Agent, such Issuing Bank or such Lender (including, without limitation, by branches and agencies of the Administrative Agent or such Lender wherever located) to or for the credit or the account of the Lead Borrower or any of its subsidiaries against and on account of the Obligations and liabilities of the Loan Parties to the Administrative Agent, such Issuing Bank or such Lender under this Agreement or under any of the other Loan Documents, including, without limitation, all claims of any nature or description arising out of or connected with this Agreement or any other Loan Document, irrespective of whether or not the Administrative Agent, such Issuing Bank or such Lender shall have made any demand hereunder and although said Obligations, liabilities or claims, or any of them, shall be contingent or unmatured. The Administrative Agent, each Lender and each Issuing Bank agrees to notify the Lead Borrower and the Administrative Agent promptly after the exercise of such set-off rights; provided that the failure to give such notice shall not affect the validity of such setoff and application.

(b) NOTWITHSTANDING THE FOREGOING SUBSECTION (A), AT ANY TIME THAT THE LOANS OR ANY OTHER OBLIGATION SHALL BE SECURED BY REAL PROPERTY LOCATED IN CALIFORNIA, NO ISSUING BANK OR LENDER SHALL EXERCISE A RIGHT OF SET-OFF, LIEN OR COUNTERCLAIM OR TAKE ANY COURT OR ADMINISTRATIVE ACTION OR INSTITUTE ANY PROCEEDING TO ENFORCE ANY PROVISION OF THIS AGREEMENT OR

ANY NOTE UNLESS IT IS TAKEN WITH THE CONSENT OF THE REQUIRED LENDERS OR APPROVED IN WRITING BY THE ADMINISTRATIVE AGENT, IF SUCH SET-OFF OR ACTION OR PROCEEDING WOULD OR MIGHT (PURSUANT TO CALIFORNIA CODE OF CIVIL PROCEDURE SECTIONS 580a, 580b, 580d AND 726 OF THE CALIFORNIA CODE OF CIVIL PROCEDURE OR SECTION 2924 OF THE CALIFORNIA CIVIL CODE, IF APPLICABLE, OR OTHERWISE) AFFECT OR IMPAIR THE VALIDITY, PRIORITY OR ENFORCEABILITY OF THE LIENS GRANTED TO THE COLLATERAL AGENT PURSUANT TO THE SECURITY DOCUMENTS OR THE ENFORCEABILITY OF THE NOTES AND OTHER OBLIGATIONS HEREUNDER, AND ANY ATTEMPTED EXERCISE BY ANY ISSUING BANK OR ANY LENDER OF ANY SUCH RIGHT WITHOUT OBTAINING SUCH CONSENT OF THE REQUIRED LENDERS OR THE ADMINISTRATIVE AGENT SHALL BE NULL AND VOID. THIS SUBSECTION (B) SHALL BE SOLELY FOR THE BENEFIT OF EACH ISSUING BANK, EACH OF THE LENDERS AND THE ADMINISTRATIVE AGENT HEREUNDER.

Section 13.03 Notices.

(a) Except as otherwise expressly provided herein, all notices and other communications provided for hereunder shall be in writing and emailed: if to any Loan Party, at its address specified on Schedule 13.03; if to any Lender, at its address specified on Schedule 13.03 or in writing to the Administrative Agent; and if to the Administrative Agent, at the Notice Office; or, as to any Loan Party or the Administrative Agent, at such other address as shall be designated by such party in a written notice to the other parties hereto and, as to each Lender, at such other address as shall be designated by such Lender in its Administrative Questionnaire.

(b) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communications pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices pursuant to Article 2 unless otherwise agreed by the Administrative Agent. Each of the Administrative Agent and the Lead Borrower may, in its discretion, agree to accept notices and other communications to it hereunder by electronic communications pursuant to procedures approved by it; provided that approval of such procedures may be limited to particular notices or communications.

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

Section 13.04 Benefit of Agreement; Assignments; Participations, Etc.

(a) The provisions of this Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), except that (i) no Borrower may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of each Lender (and any attempted assignment or transfer by a Borrower without such consent shall be null and void) and (ii) no Lender may assign or otherwise transfer its rights or obligations hereunder except in accordance with this Section. Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person

(other than the parties hereto, their respective successors and assigns permitted hereby (including any Affiliate of any Issuing Bank that issues any Letter of Credit), Participants (to the extent provided in paragraph (c) of this Section) and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent, the Issuing Banks and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) (i) Subject to the conditions set forth in paragraph 13.04(b)(ii) below, any Lender may assign to one or more Eligible Transferees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment, participations in Letters of Credit and the Loans at the time owing to it) with:

(A) the prior written consent (such consent not to be unreasonably withheld) of the Lead Borrower; provided that the Lead Borrower shall be deemed to have consented to an assignment unless it shall have objected thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; provided further that no consent of the Lead Borrower shall be required for an assignment to a Lender, an Affiliate of a Lender, an Approved Fund or if any Event of Default has occurred and is continuing, any other Eligible Transferee (it being understood that, in the event of any assignment made without the Lead Borrower's consent, the assigning Lender shall provide written notice thereof to the Lead Borrower prior to, or promptly after, such assignment);

(B) the prior written consent (such consent not to be unreasonably withheld) of the Administrative Agent; provided that no consent of the Administrative Agent shall be required for an assignment to a Lender, an Affiliate of a Lender or an Approved Fund;

(C) the prior written consent (such consent not to be unreasonably withheld) of each applicable Issuing Bank; provided that no consent of any Issuing Bank shall be required for an assignment (I) from a Lender to its Affiliate or (II) for an assignment of DIP Term Loans; and

(D) the prior written consent (such consent not to be unreasonably withheld) of the Swingline Lender; provided that no consent of the Swingline Lender shall be required for an assignment (I) from a Lender to its Affiliate or (II) for an assignment of DIP Term Loans.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender or an Affiliate of a Lender or an assignment of the entire remaining amount of the assigning Lender's Commitment or Loans of any Class, the amount of the Commitment or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Assumption with respect to such assignment is delivered to the Administrative Agent) shall not be less than $5,000,000 (or, in the case of DIP Term Loans or DIP Term Commitments, $1,000,000) unless each of the Lead Borrower and the Administrative Agent otherwise consent; provided that no such consent of the Lead Borrower shall be required if any Event of Default has occurred and is continuing;

(B) each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement; provided that this clause shall not be construed to prohibit the assignment of a

proportionate part of all the assigning Lender's rights and obligations in respect of Commitments or Loans of a single class, other than as set forth in clause (C) below;

(C) [reserved];

(D) the parties to each assignment shall execute and deliver to the Administrative Agent (x) an Assignment and Assumption or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants), together with the payment by the assignee of a processing and recordation fee of $3,500;

(E) [reserved];

(F) the assignee shall not be, in the case of an assignment of Revolving Loans or Revolving Commitments, a DIP Term Lender other than pursuant to the terms of Section 15.01;

(G) the assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an Administrative Questionnaire in which the assignee designates one or more credit contacts to whom all syndicate-level information (which may contain material non-public information about the Loan Parties and their related parties or their respective securities) will be made available and who may receive such information in accordance with the assignee's compliance procedures and applicable laws, including Federal and state securities laws;

(H) notwithstanding anything to the contrary in this Section 13.04 or elsewhere in this Agreement, the consent of each Swiss Borrower shall, so long as no Event of Default has occurred and is continuing, be required (such consent not to be unreasonably withheld or delayed) for an assignment or participation to an assignee or Participant that is a Swiss Non-Qualifying Lender; provided, however, that such a consent shall not be required by any Swiss Borrower, if, taking into consideration the contemplated assignment or participation, the number of Lenders or Participants, as applicable, that are Swiss Non-Qualifying Lenders, does not and will not exceed ten (10); and

(I) notwithstanding anything to the contrary in this Section 13.04 or elsewhere in this Agreement, any DIP Term Lender that is the Stalking Horse Bidder or an Affiliate of the Stalking Horse Bidder will not be permitted to assign or otherwise transfer its DIP Term Commitments or any DIP Term Loans to any Person that is not the Stalking Horse Bidder or an Affiliate of the Stalking Horse Bidder until and unless: (x) it has funded Interim DIP Term Loans on the Interim DIP Term Funding Date in an amount equal to the Interim DIP Term Amount and (y) it has funded DIP Term Loans on the DIP Term Loan Closing Date in an amount equal to the Closing Date DIP Term Amount.

(iii) Subject to acceptance and recording thereof pursuant to clause 13.04(b)(iv) below, from and after the effective date specified in each Assignment and Assumption the assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Assumption, have the rights and obligations of a Lender under this Agreement, and the assigning Lender thereunder shall, to the extent of the interest assigned by such Assignment and

Assumption, be released from its obligations under this Agreement (and, in the case of an Assignment and Assumption covering all of the assigning Lender's rights and obligations under this Agreement, such Lender shall cease to be a party hereto but shall continue to be entitled to the benefits of Sections 3.01, 3.02, 5.01 and 13.01). Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Section 13.04 shall be treated for purposes of this Agreement as a sale by such Lender of a participation in such rights and obligations in accordance with clause (c) below.

(iv) The Administrative Agent, acting for this purpose as a non-fiduciary agent of the Borrowers, shall maintain at one of its offices a copy of each Assignment and Assumption delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Commitment of, and principal amount (and stated interest) of the Loans and LC Disbursements owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent demonstrable error, and the Borrowers, the Administrative Agent, the Issuing Banks and the Lenders shall treat each Person whose name is recorded in the Register pursuant to the terms hereof as a Lender hereunder for all purposes of this Agreement, notwithstanding notice to the contrary. The Register shall be available for inspection by the Borrowers, any Lender, as to its own positions only, and any Issuing Bank, at any reasonable time and from time to time upon reasonable prior notice.

(v) Upon its receipt of (x) a duly completed Assignment and Assumption executed by an assigning Lender and an assignee or (y) to the extent applicable, an agreement incorporating an Assignment and Assumption by reference pursuant to a Platform as to which the Administrative Agent and the parties to the Assignment and Assumption are participants), the assignee's completed Administrative Questionnaire (unless the assignee shall already be a Lender hereunder), the processing and recordation fee referred to in clause (b)(ii)(D) above and any written consent to such assignment required by clause 13.04(b)(i) above, the Administrative Agent shall accept such Assignment and Assumption and record the information contained therein in the Register; provided that if either the assigning Lender or the assignee shall have failed to make any payment required to be made by it pursuant to this Agreement, the Administrative Agent shall have no obligation to accept such Assignment and Assumption and record the information therein in the Register unless and until such payment shall have been made in full, together with all accrued interest thereon. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(c) Any Lender may, without the consent of any Borrower, the Administrative Agent, the Issuing Banks or the Swingline Lender, sell participations to one or more Eligible Transferees (a "Participant"), in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Commitment and the Loans (including participations in Letters of Credit) owing to it); provided that (A) such Lender's obligations under this Agreement shall remain unchanged; (B) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations; (C) the Borrowers, the Administrative Agent, the Issuing Banks and the other Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement; (D) [reserved]; and (E) in respect of a participation of Revolving Commitments or Revolving Loans, such Participant shall not be a DIP Term Lender. Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that requires the consent of each Lender or each adversely affected Lender and that directly affects such Participant. Each Borrower agrees that each Participant shall be entitled to the benefits of Sections 3.01 and 5.01 (subject to the

requirements and limitations therein (it being understood that the documentation required under Section 5.01 shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to clause (b) of this Section 13.04; provided that such Participant (A) agrees to be subject to the provisions of Section 3.03 as if it were an assignee under clause (b) of this Section; and (B) shall not be entitled to receive any greater payment under Section 3.01 or 5.01, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrower's request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 3.04 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 13.02 as though it were a Lender; provided that such Participant agrees to be subject to Section 3.03 as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Loans or other obligations under the Loan Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any Commitments, Loans, Letters of Credit or its other obligations under any Loan Document) to any Person except to the extent such disclosure is necessary to establish that such Commitments, Loans, Letters of Credit or other obligation is in registered form under Section 5f.103-1(c) or Proposed Section 1.163-5(b) of the United States Treasury Regulations (or, in each case, any amended or successor version). The entries in the Participant Register shall be conclusive absent demonstrable error, and such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register.

(d) [reserved].

(e) Nothing in this Agreement shall prevent or prohibit any Lender from pledging its Loans and Notes hereunder to a Federal Reserve Bank or any central banking authority in support of borrowings made by such Lender from such Federal Reserve Bank or any such central banking authority and, with prior notification to the Administrative Agent (but without the consent of the Administrative Agent or the Borrowers), any Lender which is a fund may pledge all or any portion of its Loans and Notes to its trustee or to a collateral agent providing credit or credit support to such Lender in support of its obligations to such trustee, such collateral agent or a holder of such obligations hereunder, as the case may be. No pledge pursuant to this clause (e) shall release the transferor Lender from any of its obligations hereunder (to include, for the avoidance of doubt, in case of an enforcement of such pledge, the limitations pursuant to clause (b)(ii)(H) above) or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) [reserved].

(g) [reserved].

(h) [reserved].

(i) [reserved].

(j) Each Lender acknowledges and agrees to comply with the provisions of this Section 13.04 applicable to it as a Lender hereunder.

Section 13.05 No Waiver; Remedies Cumulative. No failure or delay on the part of the Administrative Agent, the Collateral Agent or any Lender in exercising any right, power or privilege hereunder or under any other Loan Document and no course of dealing between the Borrowers or any other Loan Party and the Administrative Agent, the Collateral Agent or any Lender shall operate as a waiver thereof; nor shall any single or partial exercise of any right, power or privilege hereunder or under any other Loan Document preclude any other or further exercise thereof or the exercise of any other right, power or privilege hereunder or thereunder. The rights, powers and remedies herein or in any other Loan Document expressly provided are cumulative and not exclusive of any rights, powers or remedies which the Administrative Agent, the Collateral Agent or any Lender would otherwise have. No notice to or demand on any Loan Party in any case shall entitle any Loan Party to any other or further notice or demand in similar or other circumstances or constitute a waiver of the rights of the Administrative Agent, the Collateral Agent or any Lender to any other or further action in any circumstances without notice or demand.

Section 13.06 Exclusions of the Australian PPSA; Australian PPSA Further Assurances.

(a) Where any Secured Party has a security interest (as defined in the Australian PPSA) under any Loan Document, to the extent the law permits:

(i) for the purposes of sections 115(1) and 115(7) of the Australian PPSA:

(1) each Secured Party with the benefit of the security interest need not comply with sections 95, 118, 121(4), 125, 130, 132(3)(d) or 132(4) of the Australian PPSA; and

(2) sections 142 and 143 of the Australian PPSA are excluded;

(ii) for the purposes of section 115(7) of the Australian PPSA, each Secured Party with the benefit of the security interest need not comply with sections 132 and 137(3);

(iii) each Party waives its right to receive from any Secured Party any notice required under the Australian PPSA (including a notice of a verification statement);

(iv) if a Secured Party with the benefit of a security interest exercises a right, power or remedy in connection with it, that exercise is taken not to be an exercise of a right, power or remedy under the Australian PPSA unless the Secured Party states otherwise at the time of exercise. However, this clause does not apply to a right, power or remedy which can only be exercised under the Australian PPSA; and

(v) if the Australian PPSA is amended to permit the Parties to agree not to comply with or to exclude other provisions of the PPSA, the Administrative Agent may notify the Lead Borrower and the Secured Parties that any of these provisions is excluded, or that the Secured Parties need not comply with any of these provisions.

This clause (a) does not affect any rights a person has or would have other than by reason of the Australian PPSA and applies despite any other clause in any Loan Document.

(b) Whenever the Administrative Agent or the Australian Security Trustee reasonably requests a Loan Party to take an action to ensure any Loan Document (or any security interest (as defined in the Australian PPSA) is fully effective, enforceable and perfected with the contemplated priority, for more satisfactorily assuring or securing to the Loan Parties the property the subject of any such security interest or other Security in a manner consistent with the Loan Documents or for aiding the exercise of any power

in any Loan Document, the Loan Party shall do it promptly at its own cost. Such actions may include obtaining consents, signing documents, getting documents completed and signed and supplying information, delivering documents and evidence of title and executed blank transfers, or otherwise giving possession or control with respect to any property the subject of any security interest.

Section 13.07 Distributable Reserves. Nothing in this Agreement or any other Loan Document will prevent any of the Lead Borrower, any other Borrower or any of the Subsidiaries from reducing its company capital in any way permitted by applicable law and the Lenders hereby consent to any such reduction of company capital and, without limiting the foregoing, consent to and agree not to object to any such reduction of company capital by way of court or other procedure required to implement any such reduction of company capital. Notwithstanding the foregoing, nothing in this Section 13.07 shall diminish the applicability of the covenants contained in Article 10 hereof.

Section 13.08 GOVERNING LAW; SUBMISSION TO JURISDICTION; VENUE; WAIVER OF JURY TRIAL; PROCESS AGENT.

(a) THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND THE RIGHTS AND OBLIGATIONS OF THE PARTIES HEREUNDER AND THEREUNDER SHALL, EXCEPT AS OTHERWISE PROVIDED IN THE RELEVANT SECURITY DOCUMENT, BE CONSTRUED IN ACCORDANCE WITH AND BE GOVERNED BY THE LAW OF THE STATE OF NEW YORK AND, TO THE EXTENT APPLICABLE, THE BANKRUPTCY COURT. ANY LEGAL ACTION OR PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT THAT, (X) IN THE CASE OF ANY MORTGAGE OR OTHER SECURITY DOCUMENT, PROCEEDINGS MAY ALSO BE BROUGHT BY THE ADMINISTRATIVE AGENT OR COLLATERAL AGENT IN THE STATE IN WHICH THE RELEVANT MORTGAGED PROPERTY OR COLLATERAL IS LOCATED OR ANY OTHER RELEVANT JURISDICTION, (Y) IN THE CASE OF ANY SPECIFIED FOREIGN LOAN DOCUMENT, LEGAL ACTIONS AND PROCEEDINGS MAY BE BROUGHT AS SPECIFIED THEREIN AND (Z) IN THE CASE OF ANY BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS WITH RESPECT TO ANY LOAN PARTY, ACTIONS OR PROCEEDINGS RELATED TO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS MAY BE BROUGHT IN SUCH COURT HOLDING SUCH BANKRUPTCY, INSOLVENCY OR SIMILAR PROCEEDINGS, INCLUDING, IN THE CASE OF THE DEBTORS, THE BANKRUPTCY COURT) MAY ONLY BE BROUGHT IN THE COURTS OF THE STATE OF NEW YORK OR OF THE UNITED STATES FOR THE SOUTHERN DISTRICT OF NEW YORK, IN EACH CASE WHICH ARE LOCATED IN THE COUNTY OF NEW YORK, AND, BY EXECUTION AND DELIVERY OF THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT, EACH OF THE PARTIES HERETO OR THERETO HEREBY IRREVOCABLY ACCEPTS FOR ITSELF AND IN RESPECT OF ITS PROPERTY, GENERALLY AND UNCONDITIONALLY, THE EXCLUSIVE JURISDICTION OF THE AFORESAID COURTS. EACH PARTY HERETO HEREBY FURTHER IRREVOCABLY WAIVES ANY CLAIM THAT ANY SUCH COURTS LACK PERSONAL JURISDICTION OVER IT, AND AGREES NOT TO PLEAD OR CLAIM, IN ANY LEGAL ACTION PROCEEDING WITH RESPECT TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENTS BROUGHT IN ANY OF THE AFOREMENTIONED COURTS, THAT SUCH COURTS LACK PERSONAL JURISDICTION OVER IT. EACH PARTY HERETO IRREVOCABLY CONSENTS TO THE SERVICE OF PROCESS OUT OF ANY OF THE AFOREMENTIONED COURTS IN ANY SUCH ACTION OR PROCEEDING BY THE MAILING OF COPIES THEREOF BY REGISTERED OR CERTIFIED MAIL, POSTAGE PREPAID AT SUCH PARTY'S ADDRESS SET FORTH IN SECTION 13.03, SUCH SERVICE TO BECOME EFFECTIVE 30 DAYS AFTER SUCH MAILING. EACH PARTY HERETO IRREVOCABLY WAIVES ANY OBJECTION TO SUCH SERVICE OF PROCESS AND FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY ACTION OR PROCEEDING COMMENCED HEREUNDER OR UNDER ANY OTHER LOAN DOCUMENT THAT SERVICE OF PROCESS WAS

IN ANY WAY INVALID OR INEFFECTIVE. NOTHING HEREIN SHALL AFFECT THE RIGHT OF ANY PARTY HERETO TO SERVE PROCESS IN ANY OTHER MANNER PERMITTED BY LAW OR ANY RIGHT THAT ANY AGENT, ANY ISSUING BANK OR ANY LENDER MAY OTHERWISE HAVE TO COMMENCE LEGAL PROCEEDINGS OR OTHERWISE PROCEED AGAINST ANY LOAN PARTY OR ITS PROPERTIES IN ANY OTHER JURISDICTION.

(b) EACH PARTY HERETO HEREBY IRREVOCABLY WAIVES ANY OBJECTION WHICH IT MAY NOW OR HEREAFTER HAVE TO THE LAYING OF VENUE OF ANY OF THE AFORESAID ACTIONS OR PROCEEDINGS ARISING OUT OF OR IN CONNECTION WITH THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT BROUGHT IN THE COURTS REFERRED TO IN CLAUSE (a) ABOVE AND HEREBY FURTHER IRREVOCABLY WAIVES AND AGREES NOT TO PLEAD OR CLAIM IN ANY SUCH COURT THAT ANY SUCH ACTION OR PROCEEDING BROUGHT IN ANY SUCH COURT HAS BEEN BROUGHT IN AN INCONVENIENT FORUM.

(c) EACH OF THE PARTIES TO THIS AGREEMENT HEREBY IRREVOCABLY WAIVES ALL RIGHT TO A TRIAL BY JURY IN ANY ACTION, PROCEEDING OR COUNTERCLAIM ARISING OUT OF OR RELATING TO THIS AGREEMENT, THE OTHER LOAN DOCUMENTS OR THE TRANSACTIONS CONTEMPLATED HEREBY OR THEREBY.

(d) Each Loan Party party hereto irrevocably and unconditionally appoints the Lead Borrower, with an office on the date hereof at 12301 W. Wirth Street, Wauwatosa, Wisconsin 53222, and its successors hereunder (in each case, the "Process Agent"), as its agent to receive on behalf of each such Loan Party and its property all writs, claims, process, and summonses in any action or proceeding brought against it in the State of New York; provided that to the extent the Process Agent is incorporated or organized under the laws of any jurisdiction other than the United States of America, any state thereof or the District of Columbia, the Process Agent agrees to maintain an office in the United States (which may be effected through a sub-agent) for service of process. Such service may be made by mailing or delivering a copy of such process to the respective Loan Party in care of the Process Agent at the address specified above for the Process Agent, and such Loan Party irrevocably authorizes and directs the Process Agent to accept such service on its behalf. Failure by the Process Agent to give notice to the respective Loan Party, or failure of the respective Loan Party, to receive notice of such service of process shall not impair or affect the validity of such service on the Process Agent or any such Loan Party, or of any judgment based thereon. Each Loan Party party hereto covenants and agrees that it shall take any and all reasonable action, including the execution and filing of any and all documents, that may be necessary to continue the designation of the Process Agent above in full force and effect, and to cause the Process Agent to act as such. Nothing herein shall in any way be deemed to limit the ability to serve any such writs, process or summonses in any other manner permitted by applicable law.

Section 13.09 Counterparts; Integration; Effectiveness; Electronic Execution. (a) This Agreement may be executed in counterparts (and by different parties hereto on different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. This Agreement, the other Loan Documents and any separate letter agreements with respect to (i) fees payable to the Administrative Agent and (ii) the reductions of the Letter of Credit Commitment of any Issuing Bank constitute the entire contract among the parties relating to the subject matter hereof and supersede any and all previous agreements and understandings, oral or written, relating to the subject matter hereof. Except as provided in Section 6.01, this Agreement shall become effective when it shall have been executed by the Administrative Agent and when the Administrative Agent shall have received counterparts hereof which, when taken together, bear the signatures of each of the other parties hereto, and thereafter shall be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns.

(b) Delivery of an executed counterpart of a signature page of (x) this Agreement, (y) any other Loan Document and/or (z) any document, amendment, approval, consent, information, notice (including, for the avoidance of doubt, any notice delivered pursuant to Section 13.03), certificate, request, statement, disclosure or authorization related to this Agreement, any other Loan Document and/or the transactions contemplated hereby and/or thereby (each an "Ancillary Document") that is an Electronic Signature transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page shall be effective as delivery of a manually executed counterpart of this Agreement, such other Loan Document or such Ancillary Document, as applicable. The words "execution," "signed," "signature," "delivery," and words of like import in or relating to this Agreement, any other Loan Document and/or any Ancillary Document shall be deemed to include Electronic Signatures, deliveries or the keeping of records in any electronic form (including deliveries by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page), each of which shall be of the same legal effect, validity or enforceability as a manually executed signature, physical delivery thereof or the use of a paper-based recordkeeping system, as the case may be; provided that nothing herein shall require the Administrative Agent to accept Electronic Signatures in any form or format without its prior written consent and pursuant to procedures approved by it; provided, further, without limiting the foregoing, (i) to the extent the Administrative Agent has agreed to accept any Electronic Signature, the Administrative Agent and each of the Lenders shall be entitled to rely on such Electronic Signature purportedly given by or on behalf of the Lead Borrower or any other Loan Party without further verification thereof and without any obligation to review the appearance or form of any such Electronic signature and (ii) upon the request of the Administrative Agent or any Lender, any Electronic Signature shall be promptly followed by a manually executed counterpart. Without limiting the generality of the foregoing, the Lead Borrower and each Loan Party hereby (i) agrees that, for all purposes, including without limitation, in connection with any workout, restructuring, enforcement of remedies, bankruptcy proceedings or litigation among the Administrative Agent, the Lenders and the Lead Borrower and the Loan Parties, Electronic Signatures transmitted by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page and/or any electronic images of this Agreement, any other Loan Document and/or any Ancillary Document shall have the same legal effect, validity and enforceability as any paper original, (ii) the Administrative Agent and each of the Lenders may, at its option, create one or more copies of this Agreement, any other Loan Document and/or any Ancillary Document in the form of an imaged electronic record in any format, which shall be deemed created in the ordinary course of such Person's business, and destroy the original paper document (and all such electronic records shall be considered an original for all purposes and shall have the same legal effect, validity and enforceability as a paper record), (iii) waives any argument, defense or right to contest the legal effect, validity or enforceability of this Agreement, any other Loan Document and/or any Ancillary Document based solely on the lack of paper original copies of this Agreement, such other Loan Document and/or such Ancillary Document, respectively, including with respect to any signature pages thereto and (iv) waives any claim against any Lender-Related Person for any Liabilities arising solely from the Administrative Agent's and/or any Lender's reliance on or use of Electronic Signatures and/or transmissions by telecopy, emailed pdf. or any other electronic means that reproduces an image of an actual executed signature page, including any Liabilities arising as a result of the failure of the Lead Borrower and/or any Loan Party to use any available security measures in connection with the execution, delivery or transmission of any Electronic Signature.

Section 13.10 [reserved].

Section 13.11 Headings Descriptive. The headings of the several Sections and subsections of this Agreement are inserted for convenience only and shall not in any way affect the meaning or construction of any provision of this Agreement.

Section 13.12 Amendment or Waiver; Etc.

(a) Except as expressly contemplated below in this Section 13.12, neither this Agreement or any Loan Document nor any terms hereof or thereof may be changed, waived, discharged or terminated unless such change, waiver, discharge or termination is in writing signed by the Loan Parties party hereto or thereto, the Administrative Agent and the Required Lenders, or the Administrative Agent with the written consent of the Required Lenders, provided that no such change, waiver, discharge or termination shall:

(i) without the prior written consent of each Lender (and Issuing Bank, if applicable) directly and adversely affected thereby, extend the final scheduled maturity of any Commitment or Loan, or reduce the rate or extend the time of payment of interest or fees thereon or reduce or forgive the principal amount thereof; provided that the default interest rate specified in Section 2.06(b) may be postponed, delayed, reduced, waived or modified with the consent of (x) the Required Revolving Lenders in respect of interest rates under the DIP ABL Facilities and (y) the Required DIP Term Lenders in respect of interest rates under the DIP Term Facility (and, in each case, not, for the avoidance of doubt, the Required Lenders);

(ii) except as otherwise expressly provided in Section 15.02, release all or substantially all of the Collateral under all the Security Documents without the prior written consent of each Lender;

(iii) except as otherwise provided in Section 15.02, release all or substantially all of the value of the Guarantees by the Guarantors without the prior written consent of each Lender;

(iv) amend, modify or waive any *pro rata* sharing provision of Section 2.10, the payment waterfall provisions of Section 11.02, or any provision of this Section 13.12, in each case, without the prior written consent of each Lender;

(v) amend the definitions of Required Lenders, Required Revolving Lenders, Required DIP Term Lenders or Supermajority Lenders without the prior written consent of each Lender;

(vi) amend Section 1.04 or the definition of "Alternative Currency" in a manner that could cause any Lender to be required to lend Loans in an additional currency without the written consent of such Lender;

(vii) consent to the assignment or transfer by (A) the Lead Borrower of any of its rights and obligations under this Agreement without the written consent of each Lender and (B) any Borrower under the Revolving Facility of any of its rights and obligations under the Revolving Facility without the consent of each Revolving Lender;

(viii) (A) amend, modify or waive any condition set forth in Section 6.02 or Section 6.03 (as it pertains to the funding of the DIP Term Loans) without the consent of the Required DIP Term Lenders, (B) amend, modify or waive any condition set forth in Section 6.03 (as it pertains to a Credit Extension under the Revolving Commitments) or in Section 6.02(a) without the consent of the Required Revolving Lenders and (C) amend, modify or waive any condition set forth in Section 6.01 without the consent of the Required Lenders (provided that, any amendment or modification to Section 6.02 or Section 6.03 as it pertains to the funding of the DIP Term Loans that adds any conditions or otherwise has the effect of making the conditions set forth in such Sections more onerous or restrictive on the Lead Borrower shall also require the written consent of the Required Revolving Lenders);

(ix) subject to clause (5) of the second proviso this Section 13.12(a) below, amend, modify or waive any Revolving Credit Facility Matter without the consent of the Required Revolving Lenders (and not, for the avoidance of doubt, the Required Lenders); provided that any amendment pursuant to this clause (ix) shall not be in a manner that cause the DIP ABL Facilities to cease to constitute asset-based revolving facilities without the consent of the Required DIP Term Lenders;

(x) amend, modify, waive or consent to a Revolving Credit Facility Matter Event of Default without the consent of the Required Revolving Lenders (and not, for the avoidance of doubt, the Required Lenders);

(xi) amend or modify the DIP Term Budget Covenant or waive any Event of Default arising as a result of a breach of the DIP Term Budget Covenant without the consent of the Required DIP Term Lenders (and not, for the avoidance of doubt, the Required Lenders);

(xii) increase the Revolving Commitments in excess of the Revolving Commitments as in effect as of the DIP Closing Date without the consent of the Required DIP Term Lenders (and not, for the avoidance of doubt, the Required Lenders);

(xiii) amend or modify any term applicable the Borrowing Base such that the amount of the Borrowing Base will increase by more than 10% under the relevant terms as in effect as of the DIP Closing Date without the consent of the Required DIP Term Lenders; or

(xiv) amend or modify Section 2.07(d), Section 2.09(f) or Section 10.14 without the consent of the Required DIP Term Lenders (and not, for the avoidance of doubt, the Required Lenders),

provided further that no such change, waiver, discharge or termination shall:

(1) increase the Commitments of any Lender over the amount thereof then in effect without the consent of such Lender (it being understood that waivers or modifications of conditions precedent, covenants, Defaults or Events of Default or of a mandatory reduction in the Aggregate Revolving Commitments shall not constitute an increase of the Commitment of any Lender, and that an increase in the available portion of any Commitment of any Lender shall not constitute an increase of the Commitment of such Lender);

(2) without the consent of each Agent adversely affected thereby, amend, modify or waive any provision of Article 12 or any other provision of any Loan Document as the same relates to the rights or obligations of such Agent;

(3) without the consent of Collateral Agent, amend, modify or waive any provision relating to the rights or obligations of the Collateral Agent;

(4) without the consent of an Issuing Bank or the Swingline Lender, amend, modify or waive any provision relating to the rights or obligations of such Issuing Bank or Swingline Lender;

(5) without the prior written consent of the Supermajority Lenders (and not, for the avoidance of doubt, the Required Lenders), change the definition of the terms "Aggregate Availability", "Aggregate Borrowing Base", "Availability Conditions", "U.S. Borrowing Base", "Australian Borrowing Base", "Line Cap", "Liquidity Event", "Liquidity Notice", "Liquidity Period", "Swiss Borrowing Base" or "Borrowing Base" or any component definition used therein (including,

without limitation, the definitions of "Eligible Accounts", "Eligible Equipment", "Eligible Inventory", "Eligible Real Property" and "Eligible Trademarks") if, as a result thereof, the amounts available to be borrowed by the Borrowers would be increased, or increase the percentages set forth therein or add any new classes of eligible assets thereto;

(6) solely with respect to the DIP ABL Facilities, without the prior written consent of the Supermajority Lenders, add Borrowers under this Agreement that are organized under the laws of a jurisdiction other than the United States, Australia, the Netherlands or Switzerland or, in each case, any state thereof or the District of Columbia; provided further that no Lender shall be required to lend to any such Borrower without the prior written consent of such Lender;

(7) without the prior written consent of each Revolving Lender (and not, for the avoidance of doubt, the Required Lenders), reduce the Aggregate Availability required by Section 10.10;

(8) without the prior written consent of the Required Facility Lenders (and not, for the avoidance of doubt, the Required Lenders), adversely affect the rights of Lenders under such Facility in respect of payments hereunder in a manner different than such amendment affects any other Facility; or

(9) reduce the Liquidity Reserve without the prior written consent of each Revolving Lender (and not, for the avoidance of doubt, the Required Lenders);

(b) If, in connection with any proposed change, waiver, discharge or termination of any of the provisions of this Agreement or any other Loan Document as contemplated by clauses (i) through (xi), inclusive, of the first proviso to Section 13.12(a), requiring the consent of each Lender or each Lender directly and adversely affected thereby, the consent of the Required Lenders is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained, then the Lead Borrower shall have the right to replace each such non-consenting Lender or Lenders with one or more Replacement Lenders pursuant to Section 3.04; provided that, in any event the Lead Borrower shall not have the right to replace a Lender, terminate its Commitments or repay its Loans solely as a result of the exercise of such Lender's rights (and the withholding of any required consent by such Lender) pursuant to the second proviso to Section 13.12(a).

(c) The applicable Loan Party or Parties and the Administrative Agent and/or Collateral Agent may (in its or their respective sole discretion, or shall, to the extent required by any Loan Document) enter into any amendment or waiver of any Loan Document, or enter into any new agreement or instrument, to effect the granting, perfection, protection, expansion or enhancement of any security interest in any Collateral or additional property to become Collateral for the benefit of the Secured Parties, or as required by local law to give effect to, or protect any security interest for the benefit of the Secured Parties, in any property or so that the security interests therein comply with applicable Requirements of Law and such amendment or waiver shall become effective without any further action or consent of any other person to any Loan Documents if the same is not objected to in writing by the Required Revolving Lenders or the Required DIP Term Lenders within five (5) Business Days following receipt of notice thereof.

(d) Notwithstanding anything to the contrary herein, any fee letter may be amended, or rights and privileges thereunder waived, in a writing executed only by the parties thereto.

(e) Anything herein to the contrary notwithstanding, during such period as a Lender is a Defaulting Lender, to the fullest extent permitted by applicable law, such Lender will not be entitled to vote in respect of amendments, waivers and consents hereunder and the Commitment and the outstanding Loans or other extensions of credit of such Lender hereunder will not be taken into account in determining whether

the Required Lenders, Required Revolving Lenders, Required DIP Term Lenders or all of the Lenders, as required, have approved any such amendment, waiver or consent (and the definitions of "Supermajority Lenders", "Required Facility Lenders", "Required Revolving Lenders", "Required DIP Term Lenders" and "Required Lenders" will automatically be deemed modified accordingly for the duration of such period); provided that any such amendment or waiver that would increase or extend the term of the Commitment of such Defaulting Lender, extend the date fixed for the payment of principal or interest owing to such Defaulting Lender hereunder, reduce the principal amount of any obligation owing to such Defaulting Lender, reduce the amount of or the rate or amount of interest on any amount owing to such Defaulting Lender or of any fee payable to such Defaulting Lender hereunder, or alter the terms of this proviso, will require the consent of such Defaulting Lender.

(f) Further, notwithstanding anything to the contrary contained in this Section 13.12, if following the DIP Closing Date, the Administrative Agent and any Loan Party shall have jointly identified an obvious error or any error or omission of a technical or immaterial nature, in each case, in any provision of the Loan Documents, then the Administrative Agent and the Loan Parties shall be permitted to amend such provision and such amendment shall become effective without any further action or consent of any other party to any Loan Documents if the same is not objected to in writing by the Required Revolving Lenders or the Required DIP Term Lenders within five (5) Business Days following receipt of notice thereof.

(g) Notwithstanding anything set forth herein, Article 15 of this Agreement shall be solely for the benefit of the Lenders and may be amended or modified with the consent of the Required Lenders but without the consent of any Loan Party.

Section 13.13 Survival. All indemnities set forth herein including, without limitation, in Sections 3.01, 3.02, 5.01, 12.07 and 13.01 shall survive the execution, delivery and termination of this Agreement and the Notes and the making and repayment of the Obligations.

Section 13.14 [reserved].

Section 13.15 Confidentiality.

(a) Subject to the provisions of clause (b) of this Section 13.15, each Agent, each Lead Arranger, each Co-Syndication Agent, the Documentation Agent and each Lender agrees that it will not disclose any information received from or on behalf of the Lead Borrower, any other Borrower or any of their Subsidiaries relating to the Lead Borrower, any other Borrower or any of their Subsidiaries or any of their respective businesses without the prior consent of the Lead Borrower (other than to its affiliates and its and their respective directors, officers, employees, auditors, advisors, agents, representatives, counselors and credit risk insurance providers (it being understood that the disclosing Agent, Lead Arranger, Co-Syndication Agent, Documentation Agent or Lender shall be responsible for any violation of the provisions of this Section 13.15(a) by any such Person), or to another Lender if such Lender or such Lender's holding or parent company in its reasonable discretion determines that any such party should have access to such information in connection with the transactions contemplated by this Agreement and such Agent's, Lead Arranger's, Co-Syndication Agent's, Documentation Agent's or Lender's role hereunder or investment in the Loans), provided that each Agent, each Lead Arranger and each Lender may disclose any such information (i) as has become generally available to the public other than by virtue of a breach of this Section 13.15(a) by such Agent, Lead Arranger or Lender, (ii) as may be required or appropriate in any report, statement or testimony submitted to any municipal, state or Federal regulatory body or any foreign regulatory authorities and central banking authorities having or claiming to have jurisdiction over such Agent, Lead Arranger or Lender or to the Federal Reserve Board or the Federal Deposit Insurance Corporation or similar organizations (whether in the United States or elsewhere) or their successors, (iii) as

may be required or appropriate in respect to any summons or subpoena or in connection with any litigation, (iv) in order to comply with any law, order, regulation or ruling applicable to such Agent, Lead Arranger or Lender, (v) in the case of any Lead Arranger or any Lender, to the Administrative Agent or the Collateral Agent, (vi) to any prospective or actual direct or indirect contractual counterparty in any swap, hedge or similar agreement (or to any such contractual counterparty's professional advisor), so long as such contractual counterparty (or such professional advisor) agrees to be bound by the provisions of this Section 13.15 (or language substantially similar to this Section 13.15(a)), (vii) in the case of any Lender, to any prospective or actual transferee, pledgee or participant in connection with any contemplated transfer, pledge or participation of any of the Notes or Commitments or any interest therein by such Lender; provided that such prospective transferee, pledgee or participant agrees to be bound by the confidentiality provisions contained in this Section 13.15 (or language substantially similar to this Section 13.15(a)), (viii) as has become available to any Agent, any Lead Arranger, any Co-Syndication Agent, the Documentation Agent, any Lender or any of their respective Affiliates on a non-confidential basis from a source other than the Lead Borrower or any of its Subsidiaries, agents or representatives and which source is not known by such Person to be subject to a confidentiality restriction in respect thereof in favor of the Lead Borrower or any Affiliate of the Lead Borrower, (ix) for purposes of establishing a "due diligence" defense and (x) that has been independently developed by such Agent, Lead Arranger or Lender without the use of any other confidential information provided by the Lead Borrower or on the Lead Borrower's behalf; provided that, to the extent permitted pursuant to any applicable law, order, regulation or ruling, and other than in connection with credit and other bank examinations conducted in the ordinary course with respect to such Agent, Lead Arranger or Lender, in the case of any disclosure pursuant to the foregoing clauses (ii), (iii) or (iv), such Agent, Lead Arranger or Lender will use its commercially reasonable efforts to notify the Lead Borrower in advance of such disclosure so as to afford the Lead Borrower the opportunity to protect the confidentiality of the information proposed to be so disclosed. Nothing in this Agreement permits the Secured Parties to disclose any information under Section 275(4) of the Australian PPSA unless Section 275(7) of the Australian PPSA applies.

(b) The Lead Borrower hereby acknowledges and agrees that each Lender may share with any of its affiliates, and such affiliates may share with such Lender, any information related to the Lead Borrower or any of its subsidiaries (including, without limitation, any non-public customer information regarding the creditworthiness of the Lead Borrower and its subsidiaries), provided such Persons shall be subject to the provisions of this Section 13.15 to the same extent as such Lender.

(c) [reserved].

(d) If any Loan Party provides any Agent, any Lead Arranger, any Co-Syndication Agent, the Documentation Agent or any Lender with personal data of any individual as required by, pursuant to, or in connection with the Loan Documents, that Loan Party represents and warrants to the Agents, any Lead Arranger, the Co-Syndication Agents, the Documentation Agent and the Lenders that it has, to the extent required by law, (i) notified the relevant individual of the purposes for which data will be collected, processed, used or disclosed; and (ii) obtained such individual's consent for, and hereby consents on behalf of such individual to, the collection, processing, use and disclosure of his/her personal data by the Agents, the Lead Arrangers, the Co-Syndication Agents, the Documentation Agent and the Lenders, in each case, in accordance with or for the purposes of the Loan Documents, and confirms that it is authorized by such individual to provide such consent on his/her behalf.

(e) EACH LENDER ACKNOWLEDGES THAT THE INFORMATION DESCRIBED IN SECTION 13.15(a) ABOVE IS FURNISHED TO IT PURSUANT TO THIS AGREEMENT MAY INCLUDE MATERIAL NON-PUBLIC INFORMATION CONCERNING THE LEAD BORROWER AND ITS RELATED PARTIES OR THEIR RESPECTIVE SECURITIES, AND CONFIRMS THAT IT HAS DEVELOPED COMPLIANCE PROCEDURES REGARDING THE USE OF MATERIAL NON-

PUBLIC INFORMATION AND THAT IT WILL HANDLE SUCH MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH THOSE PROCEDURES AND APPLICABLE LAW, INCLUDING FEDERAL AND STATE SECURITIES LAWS.

(f) ALL INFORMATION, INCLUDING REQUESTS FOR WAIVERS AND AMENDMENTS, FURNISHED BY THE LEAD BORROWER OR THE ADMINISTRATIVE AGENT PURSUANT TO, OR IN THE COURSE OF ADMINISTERING, THIS AGREEMENT WILL BE SYNDICATE-LEVEL INFORMATION, WHICH MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION ABOUT THE BORROWER, THE LOAN PARTIES AND THEIR RELATED PARTIES OR THEIR RESPECTIVE SECURITIES. ACCORDINGLY, EACH LENDER REPRESENTS TO THE LEAD BORROWER AND THE ADMINISTRATIVE AGENT THAT IT HAS IDENTIFIED IN ITS ADMINISTRATIVE QUESTIONNAIRE A CREDIT CONTACT WHO MAY RECEIVE INFORMATION THAT MAY CONTAIN MATERIAL NON-PUBLIC INFORMATION IN ACCORDANCE WITH ITS COMPLIANCE PROCEDURES AND APPLICABLE LAW.

Section 13.16 USA Patriot Act Notice. Each Lender hereby notifies the Borrowers that pursuant to the requirements of the Patriot Act and other applicable anti-money laundering, anti-terrorist financing, government sanction and "know your client" policies, regulations, laws or rules, it is required to obtain, verify, and record information that identifies the Borrowers and each Subsidiary Guarantor, which information includes the name of each Loan Party and other information that will allow such Lender to identify the Loan Party in accordance with the Patriot Act, and each Loan Party agrees to provide such information from time to time to any Lender.

Section 13.17 [reserved].

Section 13.18 Release of Liens and Guarantees.

(a) The Lenders and the other Secured Parties hereby irrevocably agree that the Liens granted to the Collateral Agent by the Loan Parties on any Collateral shall be released: (i) in full upon the occurrence of the Termination Date as set forth in Section 13.18(d) below; (ii) to the extent such Disposition does not require the consent of the Bankruptcy Court, upon the Disposition (other than any lease or license) of such Collateral by any Loan Party to a person that is not (and is not required to become) a Loan Party in a transaction permitted by this Agreement (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iii) to the extent that such Collateral comprises property leased or licensed to a Loan Party, upon termination or expiration of such lease or license (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry), (iv) if the release of such Lien is approved, authorized or ratified in writing by the Required Lenders (or such other percentage of the Lenders whose consent may be required in accordance with Section 13.12), (v) to the extent that the property constituting such Collateral is owned by any Guarantor (other than the Lead Borrower or any other Borrower), upon the release of such Guarantor from its obligations under the Guarantee in accordance with clause (b) below (and the Collateral Agent may rely conclusively on a certificate to that effect provided to it by any Loan Party upon its reasonable request without further inquiry) and (vi) upon such Collateral becoming Excluded Property. Any such release shall not in any manner discharge, affect, or impair the Obligations or any Liens (other than those being released) upon (or obligations (other than those being released) of the Loan Parties in respect of) all interests retained by the Loan Parties, including the proceeds of any Disposition, all of which shall continue to constitute part of the Collateral except to the extent otherwise released in accordance with the provisions of the Loan Documents.

(b)

(1) In addition, the Lenders and the other Secured Parties hereby irrevocably agree that any Guarantor (other than the Lead Borrower, any other Borrower and any Guarantor on the DIP Closing Date) shall be released from its respective Guarantee (i) upon consummation of any transaction permitted hereunder (x) resulting in such Subsidiary ceasing to constitute a Subsidiary or (y) in the case of any Guarantor (other than the Lead Borrower and the Borrowers) which would not be required to be a Guarantor because it is or has become an Excluded Subsidiary, in each case following a written request by the Lead Borrower to the Administrative Agent requesting that such person no longer constitute a Guarantor and certifying its entitlement to the requested release (and the Collateral Agent may rely conclusively on a certificate to the foregoing effect without further inquiry); provided that any such release pursuant to the preceding clause (y) shall only be effective if (A) no Default or Event of Default has occurred and is continuing or would result therefrom, (B) such Subsidiary owns no assets which were previously transferred to it by another Loan Party which constituted Collateral or proceeds of Collateral (or any such transfer of any such assets would be permitted hereunder immediately following such release) and (C) at the time of such release (and after giving effect thereto), all outstanding Indebtedness of, and Investments previously made in, such Subsidiary would then be permitted to be made in accordance with the relevant provisions of Sections 10.01 and 10.04 (for this purpose, with the Borrowers being required to reclassify any such items made in reliance upon the respective Subsidiary being a Guarantor on another basis as would be permitted by such applicable Section), and any previous Dispositions thereto pursuant to Section 10.05 shall be re-characterized and would then be permitted as if same were made to a Subsidiary that was not a Guarantor (and all items described above in this clause (C) shall thereafter be deemed recharacterized as provided above in this clause (C)) or (ii) if the release of such Guarantor is approved, authorized or ratified by the Required Lenders (or such other percentage of Lenders whose consent is required in accordance with Section 13.12).

(2) [reserved].

(c) The Lenders and the other Secured Parties hereby authorize the Administrative Agent and the Collateral Agent, as applicable, to execute and deliver any instruments, documents, and agreements necessary or desirable to evidence and confirm the release of any Guarantor or Collateral pursuant to the foregoing provisions of this Section 13.18, all without the further consent or joinder of any Lender or any other Secured Party, unless such release would require an order of the Bankruptcy Court, in which case such release shall be subject to the consent of the Required Lenders. Upon the effectiveness of any such release, any representation, warranty or covenant contained in any Loan Document relating to any such Collateral or Guarantor shall no longer be deemed to be made. In connection with any release hereunder, the Administrative Agent and the Collateral Agent shall promptly (and the Secured Parties hereby authorize the Administrative Agent and the Collateral Agent to) take such action and execute any such documents as may be reasonably requested by the Borrowers and at the Borrowers' expense in connection with the release of any Liens created by any Loan Document in respect of such Loan Party, property or asset; provided that (i) the Administrative Agent shall have received a certificate of a Responsible Officer of the Lead Borrower containing such certifications as the Administrative Agent shall reasonably request, (ii) the Administrative Agent or the Collateral Agent shall not be required to execute any such document on terms which, in the applicable Agent's reasonable opinion, would expose such Agent to liability or create any obligation or entail any consequence other than the release of such Liens without recourse or warranty, and (iii) such release shall not in any manner discharge, affect or impair the Obligations or any Liens upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party, including (without limitation) the proceeds of the sale, all of which shall continue to constitute part of the Collateral. Any execution and

delivery of documents pursuant to this Section 13.18(c) shall be without recourse to or warranty by the Administrative Agent or Collateral Agent.

(d) Notwithstanding anything to the contrary contained herein or any other Loan Document, on the Termination Date, upon request of the Lead Borrower, the Administrative Agent and/or the Collateral Agent, as applicable, shall (without notice to, or vote or consent of, any Secured Party) take such actions as shall be required to release its security interest in all Collateral, and to release all obligations under any Loan Document, including, without limitation, original executed releases of the Mortgages in recordable or registerable form and any reasonable assistance as may be required to make any applicable recording, filing or registration of such releases, whether or not on the date of such release there may be any (i) obligations in respect of any Secured Bank Product Obligations (other than in connection with any application of proceeds pursuant to Section 11.02) and (ii) any contingent indemnification obligations or expense reimbursement claims not then due; provided that the Administrative Agent shall have received a certificate of a Responsible Officer of the Lead Borrower containing such certifications as the Administrative Agent shall reasonably request. Any such release of obligations shall be deemed subject to the provision that such obligations shall be reinstated if after such release any portion of any payment in respect of the obligations guaranteed thereby shall be rescinded, avoided or must otherwise be restored or returned upon the insolvency, bankruptcy, dissolution, liquidation, administration, receivership, arrangement or reorganization of any Borrower or any Guarantor, or upon or as a result of the appointment of a receiver, interim receiver, monitor, intervenor or conservator of, or trustee or similar officer for, any Borrower or any Guarantor or any substantial part of its property, or otherwise, all as though such payment had not been made. The Lead Borrower agrees to pay all reasonable and documented out-of-pocket expenses incurred by the Administrative Agent or the Collateral Agent (and their respective representatives) in connection with taking such actions to release security interests in all Collateral and all obligations under the Loan Documents as contemplated by this Section 13.18(d).

(e) Other than in connection with any application of proceeds pursuant to Section 11.02, Obligations of the Lead Borrower or any of its Subsidiaries under any Secured Bank Product Obligations (after giving effect to all netting arrangements relating to such Secured Bank Product Obligations) shall be secured and guaranteed pursuant to the Security Documents only to the extent that, and for so long as, the other Obligations are so secured and guaranteed. No person shall have any voting rights under any Loan Document solely as a result of the existence of obligations owed to it under any such Secured Bank Product Obligations. For the avoidance of doubt, no release of Collateral or Guarantors effected in the manner permitted by this Agreement shall require the consent of any holder of obligations under Secured Bank Product Obligations.

Section 13.19 [reserved].

Section 13.20 Waiver of Sovereign Immunity. Each of the Loan Parties, in respect of itself, its subsidiaries, its process agents, and its properties and revenues, hereby irrevocably agrees that, to the extent that the Borrowers or any of their respective subsidiaries or any of their respective properties has or may hereafter acquire any right of immunity, whether characterized as sovereign immunity or otherwise, from any legal proceedings, whether in the United States or elsewhere, to enforce or collect upon the Loans or any Loan Document or any other liability or obligation of the Borrowers or any of their respective subsidiaries related to or arising from the transactions contemplated by any of the Loan Documents, including, without limitation, immunity from service of process, immunity from jurisdiction or judgment of any court or tribunal, immunity from execution of a judgment, and immunity of any of its property from attachment prior to any entry of judgment, or from attachment in aid of execution upon a judgment, the Borrowers, for themselves and on behalf of their respective subsidiaries, hereby expressly waive, to the fullest extent permissible under applicable law, any such immunity, and agree not to assert any such right or claim in any such proceeding, whether in the United States or elsewhere. Without limiting the generality

of the foregoing, the Borrowers further agree that the waivers set forth in this Section 13.20 shall have the fullest extent permitted under the Foreign Sovereign Immunities Act of 1976 of the United States and are intended to be irrevocable for purposes of such Act.

Section 13.21 Acknowledgement Regarding Any Supported QFCs. To the extent that the Loan Documents provide support, through a guarantee or otherwise, for Swap Contracts or any other agreement or instrument that is a QFC (such support, "QFC Credit Support" and each such QFC, a "Supported QFC"), the parties acknowledge and agree as follows with respect to the resolution power of the Federal Deposit Insurance Corporation under the Federal Deposit Insurance Act and Title II of the Dodd-Frank Wall Street Reform and Consumer Protection Act (together with the regulations promulgated thereunder, the "U.S. Special Resolution Regimes") in respect of such Supported QFC and QFC Credit Support (with the provisions below applicable notwithstanding that the Loan Documents and any Supported QFC may in fact be stated to be governed by the laws of the State of New York and/or of the United States or any other state of the United States):

In the event a Covered Entity that is party to a Supported QFC (each, a "Covered Party") becomes subject to a proceeding under a U.S. Special Resolution Regime, the transfer of such Supported QFC and the benefit of such QFC Credit Support (and any interest and obligation in or under such Supported QFC and such QFC Credit Support, and any rights in property securing such Supported QFC or such QFC Credit Support) from such Covered Party will be effective to the same extent as the transfer would be effective under the U.S. Special Resolution Regime if the Supported QFC and such QFC Credit Support (and any such interest, obligation and rights in property) were governed by the laws of the United States or a state of the United States. In the event a Covered Party or a BHC Act Affiliate of a Covered Party becomes subject to a proceeding under a U.S. Special Resolution Regime, Default Rights under the Loan Documents that might otherwise apply to such Supported QFC or any QFC Credit Support that may be exercised against such Covered Party are permitted to be exercised to no greater extent than such Default Rights could be exercised under the U.S. Special Resolution Regime if the Supported QFC and the Loan Documents were governed by the laws of the United States or a state of the United States. Without limitation of the foregoing, it is understood and agreed that rights and remedies of the parties with respect to a Defaulting Lender shall in no event affect the rights of any Covered Party with respect to a Supported QFC or any QFC Credit Support.

Section 13.22 Absence of Fiduciary Relationship. Notwithstanding any other provision of this Agreement or any provision of any other Loan Document, (i) none of the Lead Arrangers, the Co-Syndication Agents, the Documentation Agent or any Lender shall, solely by reason of this Agreement or any other Loan Document, have any fiduciary, advisory or agency relationship or duty in respect of any Lender or any other Person and (ii) the Borrowers hereby waive, to the fullest extent permitted by law, any claims they may have against the Lead Arrangers, the Co-Syndication Agents, the Documentation Agent or any Lender for breach of fiduciary duty or alleged breach of fiduciary duty.

Section 13.23 Judgment Currency. If, for purposes of obtaining judgment in any court, it is necessary to convert a sum from the currency provided under a Loan Document ("Agreement Currency") into another currency, the rate of exchange used shall be the Spot Rate for conversion into U.S. Dollars or, for conversion into another currency, the spot rate for the purchase of the Agreement Currency with such other currency through the Administrative Agent's principal foreign exchange trading office for the other currency during such office's preceding Business Day. Notwithstanding any judgment in a currency ("Judgment Currency") other than the Agreement Currency, a Borrower shall discharge its obligation in respect of any sum due under a Loan Document only if, on the Business Day following receipt by the Administrative Agent of payment in the Judgment Currency, the Administrative Agent can use the amount paid to purchase the sum originally due in the Agreement Currency. If the purchased amount is less than the sum originally due, such Borrower agrees, as a separate obligation and notwithstanding any such

judgment, to indemnify the Administrative Agent and Lenders against such loss. If the purchased amount is greater than the sum originally due, the Administrative Agent shall return the excess amount to such Borrower (or to the Person legally entitled thereto).

Section 13.24 [reserved].

Section 13.25 Entire Agreement. This Agreement and the other Loan Documents represent the final agreement among the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements among the parties.

Section 13.26 Acknowledgement and Consent to Bail-In of Affected Financial Institutions. Notwithstanding anything to the contrary in any Loan Document or in any other agreement, arrangement or understanding among any such parties, each party hereto acknowledges that any liability of any Affected Financial Institution arising under any Loan Document may be subject to the write-down and conversion powers of the applicable Resolution Authority and agrees and consents to, and acknowledges and agrees to be bound by:

(a) the application of any Write-Down and Conversion Powers by the applicable Resolution Authority to any such liabilities arising hereunder which may be payable to it by any party hereto that is an Affected Financial Institution; and

(b) the effects of any Bail-In Action on any such liability, including, if applicable:

(i) a reduction in full or in part or cancellation of any such liability;

(ii) a conversion of all, or a portion of, such liability into shares or other instruments of ownership in such Affected Financial Institution, its parent entity, or a bridge institution that may be issued to it or otherwise conferred on it, and that such shares or other instruments of ownership will be accepted by it in lieu of any rights with respect to any such liability under this Agreement or any other Loan Document; or

(iii) the variation of the terms of such liability in connection with the exercise of the write-down and conversion powers of the applicable Resolution Authority.

To the extent not prohibited by applicable law, rule or regulation, each Lender shall notify the Lead Borrower and the Administrative Agent if it has become the subject of a Bail-In Action (or any case or other proceeding in which a Bail-In Action could reasonably be expected to be asserted against such Lender).

Section 13.27 Confirmation of Lender's Status as a Swiss Qualifying Lender.

(a) Each Revolving Lender represents and warrants to the Loan Parties that, as of the DIP Closing Date (or, if later, the date such Lender becomes a party hereto), unless notified in writing to the Administrative Agent and the Lead Borrower prior to the DIP Closing Date (or such later date), such Lender is a Swiss Qualifying Lender and has not entered into a participation arrangement with respect to this Agreement with any Person that is a Swiss Non-Qualifying Lender.

(b) Without limitation to any consent or other rights provided for in this Agreement (including Section 13.04), any Person that shall become a successor, an assignee, a Participant or a sub-participant with respect to any Revolving Lender or Participant in the DIP ABL Facilities pursuant to this Agreement

shall confirm in writing to the Administrative Agent and the Lead Borrower prior to the date such Person becomes a Lender, Participant or sub-participant, that:

(i) it is a Swiss Qualifying Lender and has not entered into a participation (including sub-participation) arrangement with respect to this Agreement with any Person that is a Swiss Non-Qualifying Lender; or

(ii) if it is a Swiss Non-Qualifying Lender, it counts as one single creditor for purposes of the Swiss Non-Bank Rules (taking into account any participations and sub-participations).

(c) Each Revolving Lender or Participant (including sub-participants) in the DIP ABL Facilities shall promptly notify the Lead Borrower and the Administrative Agent if for any reason it ceases to be a Swiss Qualifying Lender and/or it enters into a participation (including sub-participation) arrangement with respect to this Agreement with any Person that is a Swiss Non-Qualifying Lender.

ARTICLE 14 PREPETITION CREDIT AGREEMENT MATTERS

Each capitalized term used but not otherwise defined in this Article 14 , shall have the meaning given to such term in the Prepetition Credit Agreement.

Section 14.01 Forbearance under Prepetition Credit Agreement.

(a) As used in this Section 14.01, "Specified Defaults" shall mean those Defaults and Events of Default listed on Exhibit M[1] hereto.

(b) Each party hereto that is a Lender under the Prepetition Credit Agreement (a "Lender Party") has agreed that solely during the Forbearance Period (as hereinafter defined), such Lender Parties will forbear from exercising their default-related rights and remedies against the Foreign Loan Parties and the Foreign Collateral solely with respect to the Specified Defaults. Notwithstanding anything to the contrary in this Agreement, nothing herein shall restrict, impair or otherwise affect any Lender Party's rights and remedies against any Person under any agreements containing subordination or other intercreditor provisions in favor of any or all of the Lender Parties (including any rights or remedies available to the Lender Parties as a result of the occurrence or continuation of any Specified Default), or amend or modify any provision of any such subordination or intercreditor agreement.

(c) As used herein, the term "Forbearance Period" shall mean the period beginning on the DIP Closing Date and ending on the earliest to occur of the following (the occurrence of any of clause (i) through (ii), a "Termination Event"): (i) the repayment in full in cash of all then-outstanding Prepetition Obligations, (ii) the date the Bankruptcy Court denies the Debtors' motion for entry of the Final Order, and (iii) one (1) Business Day following the Final Order Deadline.

(d) Upon the occurrence of any Termination Event and the delivery of a written notice thereof by the Administrative Agent, in its discretion or at the discretion of the Required Lenders, the agreement of the Lender Parties hereunder to forbear from exercising their respective default-related rights and remedies against the Foreign Loan Parties and their assets shall immediately terminate (i) with respect to any Termination Event pursuant to clause (c) above, without the requirement of any further demand, presentment, protest, or notice of any kind, all of which the Foreign Loan Parties each waive, and (ii) with

[1] NTD: Weil to provide list of Specified Defaults.

respect to any other Termination Event. Each Foreign Loan Party agrees that any or all of the Lender Parties may at any time thereafter proceed to exercise any and all of their respective rights and remedies under, and in accordance with, any or all of the Prepetition Credit Agreement, any other Loan Document and/or applicable law, including their respective rights and remedies with respect to the Specified Defaults. Without limiting the generality of the foregoing, upon the occurrence of any Termination Event, the Foreign Loan Parties acknowledge and agree that the Lender Parties may, in their sole discretion and without the requirement of any demand, presentment, protest, or notice of any kind, take any one or more of, or all of, the following actions: (i) suspend or terminate any commitment to provide Loans or other extensions of credit under the Prepetition Credit Agreement and other Loan Documents, (ii) charge, accrue and/or demand payment of, as applicable, interest on any or all of the Obligations not paid when due at the default rate in accordance with Section 2.06(b) of the Prepetition Credit Agreement, (iii) commence any legal or other action to collect any or all of the Obligations from any Foreign Loan Party and/or any Foreign Collateral, (iv) foreclose or otherwise realize on any or all of the Foreign Collateral, and/or appropriate, setoff or apply to the payment of any or all of the Obligations, any or all of the Foreign Collateral, in each case in compliance with the Prepetition Credit Agreement, the other Loan Documents and/or applicable law, or (v) take any other enforcement action or otherwise exercise any or all rights and remedies provided for by any or all of the Prepetition Credit Agreement, any other Loan Documents and/or applicable law, all of which rights and remedies set forth in the immediately preceding clauses (i) through (v) are hereby fully reserved by the Lender Parties.

(e) Any agreement by the Lender Parties to extend the Forbearance Period, if any, must be set forth in writing and signed by a duly authorized signatory of each of the Administrative Agent and Lenders constituting "Required Lenders" under the Prepetition Credit Agreement.

(f) The Foreign Loan Parties each acknowledge that the Lender Parties have not made any assurances concerning (i) any possibility of an extension of the Forbearance Period, (ii) the manner in which or whether the Specified Defaults may be resolved or (iii) any additional forbearance, waiver, restructuring or other accommodations.

(g) The Foreign Loan Parties party hereto agree that the running of all statutes of limitation or doctrine of laches applicable to all claims or causes of action that any Lender Party may be entitled to take or bring in order to enforce its rights and remedies against any Foreign Loan Party is, to the fullest extent permitted by law, tolled and suspended during the Forbearance Period.

Section 14.02 General Release under Prepetition Credit Agreement.

(a) In consideration of, among other things, the Administrative Agent's and the other Lender Parties' execution and delivery of this Agreement, each of the Foreign Loan Parties, on behalf of itself and its agents, representatives, officers, directors, advisors, employees, subsidiaries, controlled affiliates, successors and assigns, and any other Person asserting any right or Claim (as defined below) by or through any Foreign Loan Party (in each case, other than the Debtors) (collectively, "Releasors"), hereby forever waives, releases and discharges each Releasee from, any and all claims (including cross-claims, counterclaims, rights of set-off and recoupment), actions, causes of action, suits, debts, accounts, interests, liens, promises, warranties, damages and consequential damages, demands, agreements, bonds, bills, specialties, covenants, controversies, variances, trespasses, judgments, executions, costs, expenses or claims whatsoever, that such Releasor now has or hereafter may have, of whatsoever nature and kind, whether known or unknown, whether now existing or hereafter arising, whether arising at law or in equity (collectively, the "Claims"), against any or all of the Lender Parties and their respective affiliates, subsidiaries, shareholders and "controlling persons" (within the meaning of the federal securities laws), and their respective permitted successors and assigns, and each and all of the officers, directors, employees, agents, attorneys, advisors and other representatives of each of the foregoing Persons (collectively, the

"Releasees"), in each case based in whole or in part on facts, whether or not now known, existing on or before the DIP Closing Date, that relate to, arise out of or otherwise are in connection with: (i) any or all of the Loan Documents or transactions contemplated thereby or any actions or omissions in connection therewith, (ii) any aspect of the dealings or relationships between or among the Foreign Loan Parties, on the one hand, and any or all of the Administrative Agent and Lenders, on the other hand, relating to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof, or (iii) any aspect of the dealings or relationships between or among any or all of Sponsor, on the one hand, and the Agent and Lenders, on the other hand, but only to the extent such dealings or relationships relate to any or all of the documents, transactions, actions or omissions referenced in clause (i) hereof. The receipt by any Foreign Loan Party of any Loans or other financial accommodations made or permitted, as applicable, by any Lender Party after the DIP Closing Date shall constitute a ratification, adoption, and confirmation by such party of the foregoing general release of all Claims against the Releasees that are based in whole or in part on facts, whether or not now known or unknown, existing on or prior to the date of receipt of any such Loans or other financial accommodations. In entering into this Agreement, each Foreign Loan Party had the opportunity to consult with, and has been represented by, legal counsel and expressly disclaims any reliance on any representations, acts or omissions by any of the Releasees and hereby agrees and acknowledges that the validity and effectiveness of the releases set forth above do not depend in any way on any such representations, acts and/or omissions or the accuracy, completeness or validity thereof. The provisions of this Section shall survive the termination of this Agreement, the Prepetition Credit Agreement, the other Loan Documents and payment in full of the Obligations.

(b) Each of the Foreign Loan Parties, on behalf of itself and the other Releasors, hereby absolutely, unconditionally and irrevocably, covenants and agrees with and in favor of each Releasee that it will not sue (at law, in equity, in any regulatory proceeding or otherwise) any Releasee on the basis of any Claim released, remised and discharged by Foreign Loan Party pursuant to Section 14.01 hereof. If any Foreign Loan Party or any of other Releasor violates the foregoing covenant, the Foreign Loan Parties, each for itself and the other Releasors, agrees to pay, in addition to such other damages as any Releasee may sustain as a result of such violation, all reasonable out-of-pocket attorneys' and other advisor fees, costs and expenses incurred by any Releasee as a result of such violation.

(c) Each of the Foreign Loan Parties agrees and acknowledges that the Claims it is releasing and covenanting not to sue, as applicable, pursuant to the provisions of clause (a) above include any Claims which such Foreign Loan Party does not know or suspect to exist in its favor at the time of the giving of the foregoing releases and covenants not to sue which, if known by it, might affect its decision regarding the releases and covenants not to sue set forth herein. Each of the Foreign Loan Parties further agrees and acknowledges that it might hereafter discover facts or documents in addition to or different from those which it now knows or believes to be true or exist with respect to the subject matter of any Claims it is releasing pursuant to clause (a) above, but no Releasee shall have any duty to disclose or provide any such facts or documents (whether material or immaterial, known or unknown, suspected or unsuspected) to any Foreign Loan Party or other Releasor.

(d) Each Foreign Loan Party and other Releasor shall be deemed to have fully, finally and forever settled and released any and all Claims released pursuant to clause (a) above, whether known or unknown, suspected or unsuspected, contingent or non-contingent, which now exist or heretofore have existed upon any theory of law or equity now existing or coming into existence in the future. Notwithstanding anything to the contrary herein, nothing contained herein is intended to impair or otherwise derogate from any of the representations, warranties, covenants and other terms expressly set forth in this Agreement.

(e) Each Foreign Loan Party agrees to indemnify, hold harmless and defend the Releasees in connection with this Agreement and the other documents and transactions contemplated hereby or related

hereto, including fees, costs and expenses of attorneys and other advisors, all as provided in, and to the extent required by, Section 13.01 of the Prepetition Credit Agreement; provided, however, the Foreign Loan Parties agree that the Administrative Agent's and Lender Parties' entering into and complying with the terms of this Agreement shall not constitute bad faith, gross negligence or willful misconduct.

Section 14.03 Stipulations under Prepetition Credit Agreement. The Loan Parties each admit, stipulate, and agree as follows:

(a) Prepetition Obligations. As of the Petition Date, the Loan Parties hereby stipulate and agree that they were truly and justly indebted and liable to the Prepetition Secured Parties, without defense, counterclaim, or offset of any kind, in the aggregate principal amount of not less than $325,897,815.58 in respect of loans, other extensions of credit made, letters of credit issued and other financial accommodations made, in each case pursuant to the Loan Documents, plus accrued and unpaid interest thereon and any fees and expenses (including fees and expenses of attorneys) related thereto as provided in the Loan Documents, plus all other outstanding amounts that would constitute "Obligations" (collectively, the "Prepetition ABL Obligations"). No portion of the Prepetition ABL Obligations shall be subject to avoidance, recharacterization, recovery, or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law.

(b) Prepetition Secured Liens Granted by the Loan Parties. The liens and security interests granted by the Loan Parties to the Administrative Agent (for the ratable benefit of the Secured Parties) to secure the Prepetition ABL Obligations are (i) valid, binding, perfected, enforceable, first priority (subject to permitted exceptions under the Prepetition Credit Agreement) liens on and security interests in the Loan Parties' real and personal property constituting Collateral (all such Collateral, the "Prepetition ABL Collateral," and such Collateral, including, Cash Collateral, in which the Loan Parties have an interest, the "Prepetition Collateral"); (ii) not subject to avoidance, recharacterization, or subordination pursuant to the Bankruptcy Code or applicable nonbankruptcy law; and (iii) subject and subordinate only to other valid and unavoidable liens on the Prepetition ABL Collateral perfected prior to the Petition Date (or perfected after the Petition Date to the extent permitted by section 546(b) of the Bankruptcy Code) to the extent such liens are senior to the liens securing the Prepetition ABL Obligations.

(c) Prepetition ABL Collateral Value. As of the Petition Date, (i) the aggregate value of the Prepetition ABL Collateral securing the Prepetition ABL Obligations exceeds the aggregate amount of the Prepetition ABL Obligations; and (ii) the aggregate value of the Prepetition Collateral securing the Prepetition ABL Obligations owed by the Loan Parties exceeds the aggregate amount of the Prepetition ABL Obligations owed by the Loan Parties.

(d) Cash Collateral. All of the Loan Parties' cash and cash equivalents (including without limitation, all cash, securities and other amounts on deposit or maintained by the Loan Parties in any account or accounts with any Secured Party and any cash proceeds of the disposition of any Prepetition Collateral) other than the Excluded Property constitute proceeds of the Prepetition Collateral and, therefore, are cash collateral of the Secured Parties, within the meaning of section 363(a) of the Bankruptcy Code.

Section 14.04 Amendment to the Prepetition Credit Agreement. Each Lender agrees that, on the DIP Closing Date, Section 11.02(c) of the Prepetition Credit Agreement shall be deemed amended to reflect the application of proceeds described in Section 11.02(c) (the "Foreign Priority Waterfall").

ARTICLE 15 AGREEMENT AMONG LENDERS

Section 15.01 Purchase Option.

(a) For so long as any Event of Default has occurred and is continuing or if all or a substantial portion of the Collateral is being sold on a non-going concern basis, the DIP Term Lenders shall collectively, after the DIP Term Loan Closing Date, have the right (the "Purchase Option"), by giving an irrevocable written notice (a "Committed Buy-Out Notice"; it being understood that no DIP Term Lender has any obligation to send a Committed Buy-Out Notice) to the Administrative Agent, to purchase all (but not less than all) of the Purchase Obligations at par, without warranty or representation or recourse (except as set forth in clause (b) below), on a pro rata basis across Participating Term Lenders. In exercising its rights under this Section, each DIP Term Lender shall have the option to purchase its pro rata share of the Purchase Obligations upon delivery of a Committed Buy-Out Notice. If any DIP Term Lender determines not to commit to the purchase of its full pro rata share of the Purchase Obligations, then any other Term Lender who has committed to purchase its pro rata share may be offered an opportunity to purchase additional portions of the Purchase Obligations (offered ratably to the remaining Term Lenders) (the Term Lenders participating in such purchase being the "Participating Term Lenders").

(b) Upon the receipt by the Administrative Agent of one or more Committed Buy-Out Notices from one or more Participating Term Lenders resulting in commitments to purchase all (but not less than all) of the Purchase Obligations at par, the Participating Term Lenders irrevocably shall be committed to acquire (and each Revolving Lender irrevocably shall be required to sell), within ten (10) days following such receipt, from the Revolving Lenders all (but not less than all) of the Purchase Obligations by paying to the Administrative Agent, for the benefit of the Revolving Lenders, in cash in an amount equal to the Purchase Price. Upon payment of the Purchase Price to the Revolving Lenders, each Revolving Lender shall assign to the Participating Term Lenders or their Affiliates, its right, title and interest with respect to the Purchase Obligations pursuant to an Assignment and Assumption, without any representation, recourse, or warranty whatsoever (except that each Revolving Lender shall severally (and not jointly) warrant to the Participating Term Lenders to the effect that (i) the amount quoted by such Revolving Lender as its portion of the Purchase Price represents the amount shown as owing with respect to the claims transferred as reflected on its books and records, (ii) it owns, or has the right to transfer to the Participating Term Lenders, the Purchase Obligations and (iii) the Purchase Obligations being transferred by it will be free and clear as of the date of transfer of all Liens created by such Revolving Lender. Each Revolving Lender will retain all rights to indemnification provided in the relevant Loan Documents for all claims and other amounts relating to periods prior to the purchase of the Purchase Obligations pursuant to this Section 15.01.

Section 15.02 Insolvency Proceedings.

(a) The Borrowers, each Revolving Lender and each DIP Term Lender acknowledge and agree that, because of, among other things, the differing rights of the Revolving Lenders and DIP Term Lenders in the Collateral and application of funds pursuant to Section 11.02 hereof, the Revolving Loans and DIP Term Loans are each fundamentally different from the other and must be separately classified in any plan proposed, adopted or supported by any Revolving Lender or DIP Term Lender in an proceeding under Debtor Relief Laws.

(b) After the occurrence and during the continuance of an Event of Default, unless a Committed Buy-Out Notice to purchase all of the Purchase Obligations has been delivered or unless the DIP Term Lenders have made a credit bid of its DIP Term Obligations in compliance with the provisions set forth in Section 12.09, no DIP Term Lender, in its capacity as such, shall object to or oppose any Qualified Sale (and each DIP Term Lender shall be deemed to have consented to such Qualified Sale for the purposes of Section 363(f) of the Bankruptcy Code (or any similar provision in any other applicable Debtor Relief Law or any order of a court of competent jurisdiction)) if the Administrative Agent (based upon the instructions of the Required Revolving Lenders) has consented to such Qualified Sale and so long as (i) any Lien of the Administrative Agent on such Collateral attaches to the proceeds of such sale or disposition and (ii) all proceeds of such sale or disposition received by the Revolving Lenders will be

applied in accordance with the waterfall set forth in Section 11.02. Notwithstanding the foregoing, any DIP Term Lender may at any time raise any objections to any such sale or disposition of assets that could be raised by any other creditor of any Loan Party whose claims are not secured by any Liens on the applicable Collateral; provided that such objections are not based on their status as secured creditors and are not otherwise in contravention of this Agreement.

(c) No Lender shall be deemed to have consented or agreed in advance to waive (i) except as expressly set forth in clause (d) below with respect to the DIP Term Lenders, the right to object to the sale of Collateral in accordance with Section 363 or other related Sections of the Bankruptcy Code or any Debtor Relief Laws or (ii) the right to request adequate protection.

(d) Each DIP Term Lender agrees not to oppose any request by Required Revolving Lenders to seek relief from the automatic stay or any other stay in any insolvency proceeding in respect of the Collateral unless such relief is sought in connection with the disposition of such Collateral on a going concern basis; provided that DIP Term Lenders shall not oppose any disposition on a going concern basis or any request for relief from the automatic stay related thereto if (i) the disposition will provide for sources of funds sufficient to cause the Termination Date to occur upon the consummation thereof or (ii) the Required DIP Term Lenders have consented to such disposition in their commercially reasonable judgment (provided that, in the case of this clause (ii), no such consent shall be required (A) if the Sellers (as defined in the Stalking Horse APA) have validly terminated the Stalking Horse APA pursuant to Section 8.1(d) of the Stalking Horse APA or pursuant to Section 8.1(b)(ii) of the Stalking Horse APA as a result of the conditions set forth in Sections 7.1(f) or 7.2(d) of the Stalking Horse APA failing to be satisfied, (B) if the Stalking Horse Bidder has validly terminated the Stalking Horse APA as a result of the conditions set forth in Sections 7.1(f) or 7.2(d) of the Stalking Horse APA failing to be satisfied; or (C) if Stalking Horse Bidder has validly terminated the Stalking Horse APA pursuant to 8.1(b)(ii) of the Stalking Horse APA as a result of the conditions set forth in Sections 7.1(f) or 7.2(d) of the Stalking Horse APA failing to be satisfied. Notwithstanding anything set forth above, the Lien over such Collateral continues to be attached to such Collateral and all proceeds of any sale or disposition of such Collateral will be applied in accordance with the waterfall set forth in Section 11.02

Section 15.03 Stalking Horse Bidder

Each Lender acknowledges and agrees that:

(a) One or more of the DIP Term Lenders may be the Stalking Horse Bidder or an Affiliate of the Stalking Horse Bidder and nothing set forth herein or in any other Loan Document shall limit in any way the right of such Person in its capacity as the Stalking Horse Bidder under the Stalking Horse APA.

(b) The Stalking Horse Bidder shall be entitled to credit bid its DIP Term Obligations pursuant to the terms of the Stalking Horse APA as in effect on the date hereof, in each case, without the consent of any Person party hereto. Notwithstanding the foregoing, any credit bid of the DIP Term Obligations by any Stalking Horse Bidder, any DIP Term Lender that is the Stalking Horse Bidder or an Affiliate of the Stalking Horse Bidder shall, in each case, be subject to compliance with the last paragraph of Section 12.09.

Section 15.04 Intercreditor Terms.

Notwithstanding anything to the contrary contained in this Agreement, in the event that any provision of this Agreement or the other Loan Documents is deemed to conflict with the provisions in this Article 15, the provisions of this Article 15 shall control.

* * *

IN WITNESS WHEREOF, the parties hereto have caused their duly authorized officers to execute and deliver this Agreement as of the date first above written.

BRIGGS & STRATTON CORPORATION,
as Lead Borrower

By:_____
Name:
Title:

BRIGGS & STRATTON AG,
as Swiss Borrower

By:_____
Name:
Title:

JPMORGAN CHASE BANK, N.A.,
as Administrative Agent, Collateral Agent, Australian Security Trustee, a Lender and an Issuing Bank

By:_____
Name:
Title:

[ ],
as a Lender and Issuing Bank

By:_____
Name:
Title:

[ ],
as a DIP Term Lender

By:_____
Name:
Title:

[ ],
as a Lender

By:_____
Name:
Title:

Schedule 2.01

Revolving Commitments as of the DIP Closing Date

Lender	**North American Revolving Commitment**	**Swiss Revolving Commitment**	**Aggregate Revolving Commitments**
JPMorgan Chase Bank, N.A.	$66,536,262.25	$5,080,975.61	$71,617,237.86
Bank of America, N.A.	$66,536,262.25	$5,080,975.61	$71,617,237.86
Bank of Montreal	$66,536,262.25	$5,080,975.61	$71,617,237.86
Wells Fargo Bank, National Association	$66,536,262.25	$0.00	$66,536,262.25
Wells Fargo Bank, National Association (London Branch)	$0.00	$5,080,975.61	$5,080,975.61
U.S. Bank National Association	$49,672,232.64	$3,793,170.74	$53,465,403.38
CIBC Bank USA	$45,992,808.00	$3,512,195.12	$49,505,003.12
KeyBank National Association	$15,330,936.00	$1,170,731.70	$16,501,667.70
First Midwest Bank	$6,558,974.36	$0.00	$6,558,974.36
TOTAL	**$ 383,700,000.00**	**$28,800,000.00**	**$412,500,000.00**

Revolving Commitments as of the DIP Term Loan Closing Date

Lender	**North American Revolving Commitment**	**Swiss Revolving Commitment**	**Aggregate Revolving Commitments**
JPMorgan Chase Bank, N.A.	$55,698,325.35	$5,080,975.60	$60,779,300.95
Bank of America, N.A.	$55,698,325.34	$5,080,975.61	$60,779,300.95
Bank of Montreal	$55,698,325.34	$5,080,975.61	$60,779,300.95
Wells Fargo Bank, National Association	$55,698,325.34	$0.00	$55,698,325.34
Wells Fargo Bank, National Association (London Branch)	$0.00	$5,080,975.61	$5,080,975.61
U.S. Bank National Association	$41,581,238.27	$3,793,170.74	$45,374,409.01
CIBC Bank USA	$38,501,146.55	$3,512,195.12	$42,013,341.67
KeyBank National Association	$12,833,715.52	$1,170,731.71	$14,004,447.23
First Midwest Bank	$5,490,598.29	$0.00	$5,490,598.29
TOTAL	**$321,200,000.00**	**$28,800,000.00**	**$350,000,000.00**

DIP Term Commitments

Lender	**DIP Term Commitment**
Bucephalus Credit, LLC	$265,000,000.00
TOTAL	**$265,000,000.00**