IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF DELAWARE

In re: BOOMERANG TUBE, LLC, a Delaware limited liability company, *et al.*,[1] Debtors.	Chapter 11 Case No. 15-11247 (MFW) Jointly Administered **Re: Docket No. 470**

PLAN SUPPLEMENT TO THE DEBTORS' AMENDED JOINT PREARRANGED CHAPTER 11 PLAN DATED SEPTEMBER 4, 2015

The above-captioned debtors and debtors in possession (collectively, the "Debtors") submit this plan supplement (the "Plan Supplement") in support of, and in accordance with, the *Debtors' Amended Joint Prearranged Chapter 11 Plan Dated September 4, 2015* [Docket No. 470] (as may be amended, supplemented, or modified from time to time, the "Plan"). Capitalized terms used but not defined herein shall have the meanings ascribed to such terms in the Plan. The documents contained in this Plan Supplement are integral to, part of, and incorporated by reference into the Plan. These documents have not yet been approved by the Bankruptcy Court. If the Plan is confirmed by the Bankruptcy Court, the documents contained in this Plan Supplement will be approved by the Bankruptcy Court pursuant to the Confirmation Order.

Contents

This Plan Supplement contains the following documents, each as may be amended, modified, or supplemented from time to time by the Debtors in accordance with the Plan as set forth below:

[1] The Debtors in these cases, along with the last four digits of each Debtor's federal tax identification number, are: Boomerang Tube, LLC (9415); BTCSP, LLC (7632); and BT Financing, Inc. (6671). The location of the Debtors' corporate headquarters is 14567 North Outer Forty, Suite 500, Chesterfield, Missouri 63017.

Exhibit	Plan Supplement Document
1	Exit ABL Facility Loan Agreement
2	Exit Intercreditor Agreement
3	Exit Term Facility Loan Agreement
4	GUC Trust Agreement
5	List of Contracts to be Assumed under Section 5.1 of the Plan
6	New Holdco Bylaws
7	New Holdco Certificate of Incorporation
8	New Holdco Shareholders Agreement
9	New Opco Certificate of Formation
10	New Opco LLC Agreement
11	Nonexclusive list of retained Causes of Actions
12	SBI Secured Note
13	SBI Nonrecourse Note
14	Section 1129(a)(5) Disclosure of Directors and Officers
15	Subordinated Notes Agreement
16	Subordinated Notes Intercreditor Agreement
17	Amended and Restated Certificate of Incorporation of BT Financing, Inc.
18	Amended and Restated By-Laws of BT Financing, Inc.
19	Amended and Restated Limited Liability Company Agreement of BTCSP, LLC
20	Amendment to Certificate of Formation of BTCSP, LLC

Certain documents, or portions thereof, contained in this Plan Supplement remain subject to continuing negotiations among the Debtors and interested parties with respect thereto. Subject to the express provision of the Plan, the Debtors reserve all rights to amend, revise, or supplement the Plan Supplement, and any of the documents and designations contained herein, at

any time before the Effective Date of the Plan, or any such other date as may be provided for by the Plan or by order of the Bankruptcy Court.

Dated: September 11, 2015
Wilmington, Delaware

/s/ Ryan M. Bartley

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EXHIBIT 1

Exit ABL Facility Loan Agreement

CREDIT AGREEMENT

by and among

BOOMERANG TUBE, LLC

as Borrower,

THE LENDERS THAT ARE SIGNATORIES HERETO

as the Lenders,

WELLS FARGO CAPITAL FINANCE, LLC

as the Agent, Joint Lead Arranger and Joint Book Runner,

and

BANK OF AMERICA, N.A.

as the Co-Syndication Agent, Joint Lead Arranger and Joint Book Runner

Dated as of [_____], 2015

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EXHIBITS AND SCHEDULES

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Exhibit B-2	Form of Bank Products Provider Letter Agreement
Exhibit C-1	Form of Compliance Certificate
Exhibit L-1	Form of LIBOR Notice
Exhibit P-1	Form of Perfection Certificate
Exhibit P-2	Form of Encana Intercreditor Agreement
[Exhibit P-3	**Form of SB Boomerang Tubular, LLC Intercreditor Agreement]**

Schedule A-1	Agent's Account
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Schedule 4.27	Locations of Inventory and Equipment
Schedule 5.1	Financial Statements, Reports, Certificates
Schedule 5.2	Collateral Reporting
Schedule 6.12	Transactions with Affiliates

CREDIT AGREEMENT

THIS CREDIT AGREEMENT (this "Agreement"), is entered into as of [_____], 2015, by and among the lenders identified on the signature pages hereof (each of such lenders, together with their respective successors and permitted assigns, are referred to hereinafter as a "Lender", as that term is hereinafter further defined), **WELLS FARGO CAPITAL FINANCE, LLC**, a Delaware limited liability company, as agent for the Lenders (in such capacity, together with its successors and assigns in such capacity, "Agent"), and **BOOMERANG TUBE, LLC**, a Delaware limited liability company ("Borrower").

WITNESSETH

WHEREAS, the Borrower has requested that the Lenders provide a revolving credit facility for the purposes set forth herein;

WHEREAS, the Lenders have agreed to make the requested facility available on the terms and conditions set forth herein; and

WHEREAS, this Agreement is the "Exit ABL Facility Loan Agreement" referenced in that certain Debtors' Second Amended Joint Prearranged Chapter 11 Plan, dated as of September 4, 2015, filed in the bankruptcy case (the "Bankruptcy Case") of Boomerang Tube, LLC, et al. in the United States Bankruptcy Court for the District of Delaware (Case No. 15-11247 (MFW)) (the "Plan of Reorganization").

NOW, THEREFORE, in consideration of these premises and the mutual covenants and agreements contained herein, the receipt and sufficiency of which are hereby acknowledged, the parties hereto covenant and agree as follows:

1. DEFINITIONS AND CONSTRUCTION.

1.1. Definitions.

Capitalized terms used in this Agreement shall have the meanings specified therefor on Schedule 1.1.

1.2. Accounting Terms.

All accounting terms not specifically defined herein shall be construed in accordance with GAAP; provided, however, that if Borrower notifies Agent that Borrower requests an amendment to any provision hereof to eliminate the effect of any Accounting Change occurring after the Closing Date or in the application thereof on the operation of such provision (or if Agent notifies Borrower that the Required Lenders request an amendment to any provision hereof for such purpose), regardless of whether any such notice is given before or after such Accounting Change or in the application thereof, then Agent and Borrower agree that they will negotiate in good faith amendments to the provisions of this Agreement that are directly affected by such Accounting Change with the intent of having the respective positions of the Lenders and Borrower after such Accounting Change conform as nearly as possible to their respective

positions as of the date of this Agreement and, until any such amendments have been agreed upon by Borrower and Required Lenders, the provisions in this Agreement shall be calculated as if no such Accounting Change had occurred. When used herein, the term "financial statements" shall include the notes and schedules thereto. Whenever the term "Borrower" is used in respect of a financial covenant or a related definition, it shall be understood to mean Borrower and its Subsidiaries on a consolidated basis, unless the context clearly requires otherwise.

1.3. **Code**.

Any terms used in this Agreement that are defined in the Code shall be construed and defined as set forth in the Code unless otherwise defined herein; provided, however, that to the extent that the Code is used to define any term herein and such term is defined differently in different Articles of the Code, the definition of such term contained in Article 9 of the Code shall govern.

1.4. **Construction**.

Unless the context of this Agreement or any other Loan Document clearly requires otherwise, references to the plural include the singular, references to the singular include the plural, the terms "includes" and "including" are not limiting, and the term "or" has, except where otherwise indicated, the inclusive meaning represented by the phrase "and/or." The words "hereof," "herein," "hereby," "hereunder," and similar terms in this Agreement or any other Loan Document refer to this Agreement or such other Loan Document, as the case may be, as a whole and not to any particular provision of this Agreement or such other Loan Document, as the case may be. Section, subsection, clause, schedule, and exhibit references herein are to this Agreement unless otherwise specified. Any reference in this Agreement or in any other Loan Document to any agreement, instrument, or document shall include all alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements, thereto and thereof, as applicable (subject to any restrictions on such alterations, amendments, changes, extensions, modifications, renewals, replacements, substitutions, joinders, and supplements set forth herein). The words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts, and contract rights. Any reference herein or in any other Loan Document to the satisfaction, repayment, or payment in full of the Obligations shall mean the repayment in full in cash or immediately available funds (or, (a) in the case of contingent reimbursement obligations with respect to Letters of Credit, providing Letter of Credit Collateralization, and (b) in the case of obligations with respect to Bank Products (other than Hedge Obligations), providing Bank Product Collateralization) of all of the Obligations (including the payment of any termination amount then applicable (or which would or could become applicable as a result of the repayment of the other Obligations) under Hedge Agreements provided by Hedge Providers) other than (i) unasserted contingent indemnification Obligations, (ii) any Bank Product Obligations (other than Hedge Obligations) that, at such time, are allowed by the applicable Bank Product Provider to remain outstanding without being required to be repaid or cash collateralized, and (iii) any Hedge Obligations that, at such time, are allowed by the applicable Hedge Provider to remain outstanding without being required to be repaid. Any reference herein to any Person shall be construed to include such Person's successors and assigns. Any requirement of a writing contained herein or in any other Loan Document shall be satisfied by the transmission of a Record.

1.5. **Schedules and Exhibits**.

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

2. **LOAN AND TERMS OF PAYMENT**.

2.1. **Revolver Advances**.

(a) Subject to the terms and conditions of this Agreement, during the period commencing on the Closing Date and ending upon the termination of the Revolver Commitments, each Lender with a Revolver Commitment agrees (severally, not jointly or jointly and severally) to make revolving loans ("Advances") to Borrower in an amount at any one time outstanding not to exceed *the lesser of*:

(i) such Lender's Revolver Commitment, or

(ii) such Lender's Pro Rata Share of an amount equal to *the lesser of*:

(A) the Maximum Revolver Amount *less* the sum of (1) the Letter of Credit Usage at such time, *plus* (2) the principal amount of Swing Loans outstanding at such time, and

(B) the Borrowing Base at such time *less* the sum of (1) the Letter of Credit Usage at such time, *plus* (2) the principal amount of Swing Loans outstanding at such time.

(b) Amounts borrowed pursuant to this Section 2.1 may be repaid and, subject to the terms and conditions of this Agreement, reborrowed at any time during the term of this Agreement. The outstanding principal amount of the Advances, together with interest accrued thereon, shall be due and payable on the Maturity Date or, if earlier, on the date on which they are declared due and payable pursuant to the terms of this Agreement.

(c) Anything to the contrary in this Section 2.1 notwithstanding, Agent shall have the right (but not the obligation) to establish, increase, reduce, eliminate, or otherwise adjust reserves from time to time against the Borrowing Base or the Maximum Revolver Amount in such amounts, and with respect to such matters, as Agent in its Permitted Discretion shall deem necessary or appropriate, including (i) reserves in an amount equal to the Bank Product Reserve Amount, (ii) Rent Reserves, and (iii) reserves with respect to (A) sums that Borrower or its Subsidiaries are required to pay under any Section of this Agreement or any other Loan Document (such as taxes, assessments, insurance premiums, or, in the case of leased assets, rents or other amounts payable under such leases) and has failed to pay when due, and (B) amounts owing by Borrower or its Subsidiaries to any Person to the extent secured by a Lien on, or trust over, any of the Collateral (other than a Permitted Lien which is a permitted purchase money Lien or the interest of a lessor under a Capital Lease), which Lien or trust, in the Permitted Discretion of Agent likely would have a priority superior to Agent's Liens (such as Liens or trusts in favor of landlords, warehousemen, carriers, mechanics, materialmen, laborers, or suppliers, or Liens or trusts for *ad valorem*, excise, sales, or other taxes where given priority

under applicable law) in and to such item of the Collateral. The amount of any reserve established under this Section 2.1(c) shall bear a reasonable relationship to the event, condition or circumstance that is the basis for the reserve as determined by Agent in its Permitted Discretion and shall not be duplicative of other reserves factored in the formula of the Borrowing Base.

(d) [Reserved.]

2.2. **Reserved**.

2.3. **Borrowing Procedures and Settlements**.

(a) **Procedure for Borrowing**. Each Borrowing shall be made by a written request by an Authorized Person delivered to Agent. Unless Swing Lender is not obligated to make a Swing Loan pursuant to Section 2.3(b) below, such notice must be received by Agent no later than 10:00 a.m. (California time) on the Business Day that is the requested Funding Date specifying (i) the amount of such Borrowing, and (ii) the requested Funding Date, which shall be a Business Day; provided, however, that if Swing Lender is not obligated to make a Swing Loan as to a requested Borrowing, such notice must be received by Agent no later than 10:00 a.m. (California time) on the Business Day prior to the date that is the requested Funding Date. At Agent's election, in lieu of delivering the above-described written request, any Authorized Person may give Agent telephonic notice of such request by the required time. In such circumstances, Borrower agrees that any such telephonic notice will be confirmed in writing within 24 hours of the giving of such telephonic notice, but the failure to provide such written confirmation shall not affect the validity of the request.

(b) **Making of Swing Loans.** In the case of a request for an Advance and so long as either (i) the aggregate amount of Swing Loans made since the last Settlement Date, minus the amount of Collections or payments applied to Swing Loans since the last Settlement Date, plus the amount of the requested Advance does not exceed 10% of the Maximum Revolver Amount, or (ii) Swing Lender, in its sole discretion, shall agree to make a Swing Loan notwithstanding the foregoing limitation, Swing Lender shall make an Advance in the amount of such requested Borrowing (any such Advance made solely by Swing Lender pursuant to this Section 2.3(b) being referred to as a "Swing Loan" and such Advances being referred to as "Swing Loans") available to Borrower on the Funding Date applicable thereto by transferring immediately available funds to the Designated Account. Anything contained herein to the contrary notwithstanding, the Swing Lender may, but shall not be obligated to, make Swing Loans at any time that one or more of the Lenders is a Defaulting Lender, unless such Swing Loan is fully supported as result of the following: (i) such Defaulting Lender's Pro Rata Share of such Swing Loan shall be reallocated among all other Lenders with a Revolver Commitment that are non-Defaulting Lenders in proportion with their Pro Rata Shares of the Revolver Commitment, but only to the extent that, after giving effect to such reallocation, Revolver Usage does not exceed the sum of all such non-Defaulting Lenders' Pro Rata Shares of the Revolver Commitment; and (ii) to the extent that the amount of outstanding Swing Loans exceeds the amount that is permitted to be reallocated pursuant to the immediately preceding clause (i), Borrower shall have provided cash collateral to Agent to hold on behalf of Borrower, on terms and conditions reasonably satisfactory to Lenders with Revolver Commitments and Agent, in an amount equal to such excess. In the event that a Defaulting Lender ceases to be a Defaulting

Lender then the portion of such Defaulting Lender's Pro Rata Share of any Swing Loan reallocated to non-Defaulting Lenders pursuant to this Section 2.3(b) shall be reallocated to such previously Defaulting Lender. Each Swing Loan shall be deemed to be an Advance hereunder and shall be subject to all the terms and conditions (including Section 3) applicable to other Advances, except that all payments on any Swing Loan shall be payable to Swing Lender solely for its own account. Subject to the provisions of Section 2.3(d)(ii), Swing Lender shall not make and shall not be obligated to make any Swing Loan if Swing Lender has actual knowledge that (i) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, or (ii) the requested Borrowing would exceed the Availability on such Funding Date. Swing Lender shall not otherwise be required to determine whether the applicable conditions precedent set forth in Section 3 have been satisfied on the Funding Date applicable thereto prior to making any Swing Loan. The Swing Loans shall be secured by Agent's Liens, constitute Advances and Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans.

(c) **Making of Loans**.

(i) In the event that Swing Lender is not obligated to make a Swing Loan, then promptly after receipt of a request for a Borrowing pursuant to Section 2.3(a), Agent shall notify the Lenders, not later than 1:00 p.m. (California time) on the Business Day immediately preceding the Funding Date applicable thereto, by telecopy, telephone, or other similar form of transmission, of the requested Borrowing. Each Lender shall make the amount of such Lender's Pro Rata Share of the requested Borrowing available to Agent in immediately available funds, to Agent's Account, not later than 10:00 a.m. (California time) on the Funding Date applicable thereto. After Agent's receipt of the proceeds of such Advances, Agent shall make the proceeds thereof available to Borrower on the applicable Funding Date by transferring immediately available funds equal to such proceeds received by Agent to the Designated Account; provided, however, that, subject to the provisions of Section 2.3(d)(ii), Agent shall not request any Lender to make, and no Lender shall have the obligation to make, any Advance if (1) one or more of the applicable conditions precedent set forth in Section 3 will not be satisfied on the requested Funding Date for the applicable Borrowing, unless such condition has been waived, or (2) the requested Borrowing would exceed the Availability on such Funding Date.

(ii) Unless Agent receives notice from a Lender prior to 9:00 a.m. (California time) on the date of a Borrowing, that such Lender will not make available as and when required hereunder to Agent for the account of Borrower the amount of that Lender's Pro Rata Share of the Borrowing, Agent may assume that each Lender has made or will make such amount available to Agent in immediately available funds on the Funding Date and Agent may (but shall not be so required), in reliance upon such assumption, make available to Borrower on such date a corresponding amount. If any Lender shall not have made its full amount available to Agent in immediately available funds and if Agent in such circumstances has made available to Borrower such amount, that Lender shall on the Business Day following such Funding Date make such amount available to Agent, together with interest at the Defaulting Lender Rate for each day during such period. A notice submitted by Agent to any Lender with respect to amounts

owing under this Section 2.3(c)(ii) shall be conclusive, absent manifest error. If such amount is so made available, such payment to Agent shall constitute such Lender's Advance on the date of Borrowing for all purposes of this Agreement. If such amount is not made available to Agent on the Business Day following the Funding Date, Agent will notify Borrower of such failure to fund and, upon demand by Agent, Borrower shall pay such amount to Agent for Agent's account, together with interest thereon for each day elapsed since the date of such Borrowing, at a rate per annum equal to the interest rate applicable at the time to the Advances composing such Borrowing.

(d) **Protective Advances and Optional Overadvances**.

(i) Any contrary provision of this Agreement or any other Loan Document notwithstanding, Agent hereby is authorized by Borrower and the Lenders, from time to time in Agent's sole discretion, (A) after the occurrence and during the continuance of a Default or an Event of Default, or (B) at any time that any of the other applicable conditions precedent set forth in Section 3 are not satisfied, to make Advances to, or for the benefit of, Borrower on behalf of the Lenders (in an aggregate amount for all such Advances taken together not, without Required Lenders' consent, to exceed 10% of the Maximum Revolver Amount outstanding at any one time) that Agent, in its Permitted Discretion deems necessary or desirable to preserve or protect the Collateral, or any portion thereof (any of the Advances described in this Section 2.3(d)(i) shall be referred to as "Protective Advances").

(ii) Any contrary provision of this Agreement or any other Loan Document notwithstanding, the Lenders hereby authorize Agent or Swing Lender, as applicable, and either Agent or Swing Lender, as applicable, may, but is not obligated to, knowingly and intentionally, continue to make Advances (including Swing Loans) to Borrower notwithstanding that an Overadvance exists or thereby would be created, so long as (A) after giving effect to such Advances, the outstanding Revolver Usage does not, without Required Lenders' consent, exceed the Borrowing Base by more than 10% of the Maximum Revolver Amount, and (B) after giving effect to such Advances, the outstanding Revolver Usage (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) does not, without the consent of all Lenders, exceed the Maximum Revolver Amount. In the event Agent obtains actual knowledge that an Overadvance exists, Agent shall notify the Lenders as soon as practicable (and prior to making any (or any additional) intentional Overadvances (except for and excluding amounts charged to the Loan Account for interest, fees, or Lender Group Expenses) unless Agent determines that prior notice would result in imminent harm to the Collateral or its value, in which case Agent may make such Overadvances and provide notice as promptly as practicable thereafter), and the Lenders with Revolver Commitments thereupon shall, together with Agent, jointly determine the terms of arrangements that shall be implemented with Borrower intended to reduce, within a reasonable time, the outstanding principal amount of the Advances to Borrower to an amount permitted by the preceding sentence. In such circumstances, if any Lender with a Revolver Commitment objects to the proposed terms of reduction or repayment of any Overadvance, the terms of reduction or repayment thereof shall be implemented according to the determination of the Required Lenders. In any event: (x) if any

unintentional Overadvance remains outstanding for more than 30 days, unless otherwise agreed to by the Required Lenders, Borrower shall immediately repay Advances in an amount sufficient to eliminate all such unintentional Overadvances, and (y) after the date all such Overadvances have been eliminated, there must be at least five consecutive days before intentional Overadvances are made. The foregoing provisions are meant for the benefit of the Lenders and Agent and are not meant for the benefit of Borrower, which shall continue to be bound by the provisions of Section 2.5. Each Lender with a Revolver Commitment shall be obligated to settle with Agent as provided in Section 2.3(e) (or Section 2.3(g), as applicable) for the amount of such Lender's Pro Rata Share of any unintentional Overadvances by Agent reported to such Lender, any intentional Overadvances made as permitted under this Section 2.3(d)(ii), and any Overadvances resulting from the charging to the Loan Account of interest, fees, or Lender Group Expenses.

(iii) Each Protective Advance and each Overadvance shall be deemed to be an Advance hereunder, except that no Protective Advance or Overadvance shall be eligible to be a LIBOR Rate Loan and, prior to Settlement therefor, all payments on the Protective Advances shall be payable to Agent solely for its own account. The Protective Advances and Overadvances shall be repayable on demand, secured by Agent's Liens, constitute Obligations hereunder, and bear interest at the rate applicable from time to time to Advances that are Base Rate Loans. The ability of Agent to make Protective Advances is separate and distinct from its ability to make Overadvances and its ability to make Overadvances is separate and distinct from its ability to make Protective Advances. For the avoidance of doubt, the limitations on Agent's ability to make Protective Advances do not apply to Overadvances and the limitations on Agent's ability to make Overadvances do not apply to Protective Advances. The provisions of this Section 2.3(d) are for the exclusive benefit of Agent, Swing Lender, and the Lenders and are not intended to benefit Borrower in any way.

(e) **Settlement**. It is agreed that each Lender's funded portion of the Advances is intended by the Lenders to equal, at all times, such Lender's Pro Rata Share of the outstanding Advances. Such agreement notwithstanding, Agent, Swing Lender, and the other Lenders agree (which agreement shall not be for the benefit of Borrower) that in order to facilitate the administration of this Agreement and the other Loan Documents, settlement among the Lenders as to the Advances, the Swing Loans, and the Protective Advances shall take place on a periodic basis in accordance with the following provisions:

(i) Agent shall request settlement ("Settlement") with the Lenders on a weekly basis, or on a more frequent basis if so determined by Agent (1) on behalf of Swing Lender, with respect to the outstanding Swing Loans, (2) for itself, with respect to the outstanding Protective Advances, and (3) with respect to Borrower's or its Subsidiaries' Collections or payments received, as to each by notifying the Lenders by telecopy, telephone, or other similar form of transmission, of such requested Settlement, no later than 2:00 p.m. (California time) on the Business Day immediately prior to the date of such requested Settlement (the date of such requested Settlement being the "Settlement Date"). Such notice of a Settlement Date shall include a summary statement of the amount of outstanding Advances, Swing Loans, and Protective Advances for the

period since the prior Settlement Date. Subject to the terms and conditions contained herein (including Section 2.3(g)): (y) if the amount of the Advances (including Swing Loans and Protective Advances) made by a Lender that is not a Defaulting Lender exceeds such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, then Agent shall, by no later than 12:00 p.m. (California time) on the Settlement Date, transfer in immediately available funds to a Deposit Account of such Lender (as such Lender may designate), an amount such that each such Lender shall, upon receipt of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances (including Swing Loans and Protective Advances), and (z) if the amount of the Advances (including Swing Loans and Protective Advances) made by a Lender is less than such Lender's Pro Rata Share of the Advances (including Swing Loans and Protective Advances) as of a Settlement Date, such Lender shall no later than 12:00 p.m. (California time) on the Settlement Date transfer in immediately available funds to Agent's Account, an amount such that each such Lender shall, upon transfer of such amount, have as of the Settlement Date, its Pro Rata Share of the Advances (including Swing Loans and Protective Advances). Such amounts made available to Agent under clause (z) of the immediately preceding sentence shall be applied against the amounts of the applicable Swing Loans or Protective Advances and, together with the portion of such Swing Loans or Protective Advances representing Swing Lender's Pro Rata Share thereof, shall constitute Advances of such Lenders. If any such amount is not made available to Agent by any Lender on the Settlement Date applicable thereto to the extent required by the terms hereof, Agent shall be entitled to recover for its account such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate.

(ii) In determining whether a Lender's balance of the Advances, Swing Loans, and Protective Advances is less than, equal to, or greater than such Lender's Pro Rata Share of the Advances, Swing Loans, and Protective Advances as of a Settlement Date, Agent shall, as part of the relevant Settlement, apply to such balance the portion of payments actually received in good funds by Agent with respect to principal, interest, fees payable by Borrower and allocable to the Lenders hereunder, and proceeds of Collateral.

(iii) Between Settlement Dates, Agent, to the extent Protective Advances or Swing Loans are outstanding, may pay over to Agent or Swing Lender, as applicable, any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to the Protective Advances or Swing Loans. Between Settlement Dates, Agent, to the extent no Protective Advances or Swing Loans are outstanding, may pay over to Swing Lender any Collections or payments received by Agent, that in accordance with the terms of this Agreement would be applied to the reduction of the Advances, for application to Swing Lender's Pro Rata Share of the Advances. If, as of any Settlement Date, Collections or payments of Borrower or its Subsidiaries received since the then immediately preceding Settlement Date have been applied to Swing Lender's Pro Rata Share of the Advances other than to Swing Loans, as provided for in the previous sentence, Swing Lender shall pay to Agent for the accounts of the Lenders, and Agent shall pay to the Lenders (other than a Defaulting Lender if Agent has implemented the

provisions of Section 2.3(g)), to be applied to the outstanding Advances of such Lenders, an amount such that each such Lender shall, upon receipt of such amount, have, as of such Settlement Date, its Pro Rata Share of the Advances. During the period between Settlement Dates, Swing Lender with respect to Swing Loans, Agent with respect to Protective Advances, and each Lender (subject to the effect of agreements between Agent and individual Lenders) with respect to the Advances other than Swing Loans and Protective Advances, shall be entitled to interest at the applicable rate or rates payable under this Agreement on the daily amount of funds employed by Swing Lender, Agent, or the Lenders, as applicable.

(iv) Anything in this Section 2.3(e) to the contrary notwithstanding, in the event that a Lender is a Defaulting Lender, Agent shall be entitled to refrain from remitting settlement amounts to the Defaulting Lender and, instead, shall be entitled to elect to implement the provisions set forth in Section 2.3(g).

(f) **Notation**. Agent, as a non-fiduciary agent for Borrower, shall maintain a register showing the principal amount of the Advances, owing to each Lender, including the Swing Loans owing to Swing Lender, and Protective Advances owing to Agent, and the interests therein of each Lender, from time to time and such register shall, absent manifest error, conclusively be presumed to be correct and accurate.

(g) **Defaulting Lenders**. Agent shall not be obligated to transfer to a Defaulting Lender any payments made by Borrower to Agent for the Defaulting Lender's benefit or any Collections or proceeds of Collateral that would otherwise be remitted hereunder to the Defaulting Lender, and, in the absence of such transfer to the Defaulting Lender, Agent shall transfer any such payments (A) first, to Swing Lender to the extent of any Swing Loans that were made by Swing Lender and that were required to be, but were not, repaid by the Defaulting Lender, (B) second, to the Issuing Lender, to the extent of the portion of a Letter of Credit Disbursement that was required to be, but was not, repaid by the Defaulting Lender, (C) third, to each non-Defaulting Lender ratably in accordance with their Commitments (but, in each case, only to the extent that such Defaulting Lender's portion of an Advance (or other funding obligation) was funded by such other non-Defaulting Lender), (D) to a suspense account maintained by Agent, the proceeds of which shall be retained by Agent and may be made available to be re-advanced to or for the benefit of Borrower as if such Defaulting Lender had made its portion of Advances (or other funding obligations) hereunder, and (E) from and after the date on which all other Obligations have been paid in full, to such Defaulting Lender in accordance with tier (L) of Section 2.4(b)(ii). Subject to the foregoing, Agent may hold and, in its Permitted Discretion, re-lend to Borrower for the account of such Defaulting Lender the amount of all such payments received and retained by Agent for the account of such Defaulting Lender. Solely for the purposes of voting or consenting to matters with respect to the Loan Documents (including the calculation of Pro Rata Share in connection therewith) and for the purpose of calculating the fee payable under Section 2.10(b), such Defaulting Lender shall be deemed not to be a "Lender" and such Lender's Commitment shall be deemed to be zero. The provisions of this Section 2.3(g) shall remain effective with respect to such Defaulting Lender until the earlier of (y) the date on which the non-Defaulting Lenders, Agent, and Borrower shall have waived, in writing, the application of this Section 2.3(g) to such Defaulting Lender, or (z) the date on which such Defaulting Lender makes payment of all amounts that it was obligated

to fund hereunder, pays to Agent all amounts owing by Defaulting Lender in respect of the amounts that it was obligated to fund hereunder, and, if requested by Agent, provides adequate assurance of its ability to perform its future obligations hereunder. The operation of this Section 2.3(g) shall not be construed to increase or otherwise affect the Commitment of any Lender, to relieve or excuse the performance by such Defaulting Lender or any other Lender of its duties and obligations hereunder, or to relieve or excuse the performance by Borrower of its duties and obligations hereunder to Agent or to the Lenders other than such Defaulting Lender. Any failure by a Defaulting Lender to fund amounts that it was obligated to fund hereunder shall constitute a material breach by such Defaulting Lender of this Agreement and shall entitle Borrower, at its option, upon written notice to Agent, to arrange for a substitute Lender to assume the Commitment of such Defaulting Lender, such substitute Lender to be reasonably acceptable to Agent. In connection with the arrangement of such a substitute Lender, the Defaulting Lender shall have no right to refuse to be replaced hereunder, and agrees to execute and deliver a completed form of Assignment and Acceptance in favor of the substitute Lender (and agrees that it shall be deemed to have executed and delivered such document if it fails to do so) subject only to being repaid its share of the outstanding Obligations (other than Bank Product Obligations, but including (1) all interest, fees, and other amounts that may be due and payable in respect thereof, and (2) an assumption of its Pro Rata Share of the Letters of Credit); provided, however, that any such assumption of the Commitment of such Defaulting Lender shall not be deemed to constitute a waiver of any of the Lender Groups' or Borrower's rights or remedies against any such Defaulting Lender arising out of or in relation to such failure to fund. In the event of a direct conflict between the priority provisions of this Section 2.3(g) and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, the terms and provisions of this Section 2.3(g) shall control and govern.

(h) **Independent Obligations**. All Advances (other than Swing Loans and Protective Advances) shall be made by the Lenders contemporaneously and in accordance with their Pro Rata Shares. It is understood that (i) no Lender shall be responsible for any failure by any other Lender to perform its obligation to make any Advance (or other extension of credit) hereunder, nor shall any Commitment of any Lender be increased or decreased as a result of any failure by any other Lender to perform its obligations hereunder, and (ii) no failure by any Lender to perform its obligations hereunder shall excuse any other Lender from its obligations hereunder.

2.4. **Payments; Reductions of Commitments; Prepayments**.

(a) **Payments by Borrower**.

(i) Except as otherwise expressly provided herein, all payments by Borrower shall be made to Agent's Account for the account of the Lender Group and shall be made in immediately available funds, no later than 11:00 a.m. (California time) on the date specified herein. Any payment received by Agent later than 11:00 a.m. (California time) shall be deemed to have been received on the following Business Day and any applicable interest or fee shall continue to accrue until such following Business Day.

(ii) Unless Agent receives notice from Borrower prior to the date on which any payment is due to the Lenders that Borrower will not make such payment in full as and when required, Agent may assume that Borrower has made (or will make) such payment in full to Agent on such date in immediately available funds and Agent may (but shall not be so required), in reliance upon such assumption, distribute to each Lender on such due date an amount equal to the amount then due such Lender. If and to the extent Borrower does not make such payment in full to Agent on the date when due, each Lender severally shall repay to Agent on demand such amount distributed to such Lender, together with interest thereon at the Defaulting Lender Rate for each day from the date such amount is distributed to such Lender until the date repaid.

(b) **Apportionment and Application**.

(i) So long as no Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all principal and interest payments received by Agent shall be apportioned ratably among the Lenders (according to the unpaid principal balance of the Obligations to which such payments relate held by each Lender) and all payments of fees and expenses received by Agent (other than fees or expenses that are for Agent's separate account or for the separate account of the Issuing Lender) shall be apportioned ratably among the Lenders having a Pro Rata Share of the type of Commitment or Obligation to which a particular fee or expense relates. All payments to be made hereunder by Borrower shall be remitted to Agent and, subject to Section 2.4(b)(iv) and Section 2.4(e), all such payments, and all proceeds of Collateral received by Agent, shall be applied, so long as no Application Event has occurred and is continuing, to reduce the balance of the Advances outstanding and, thereafter, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(ii) At any time that an Application Event has occurred and is continuing and except as otherwise provided herein with respect to Defaulting Lenders, all payments remitted to Agent and all proceeds of Collateral received by Agent shall be applied as follows:

(A) first, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to Agent under the Loan Documents, until paid in full,

(B) second, to pay any fees or premiums then due to Agent under the Loan Documents until paid in full,

(C) third, to pay interest due in respect of all Protective Advances until paid in full,

(D) fourth, to pay the principal of all Protective Advances until paid in full,

(E) fifth, ratably, to pay any Lender Group Expenses (including cost or expense reimbursements) or indemnities then due to any of the Lenders under the Loan Documents, until paid in full,

(F) sixth, ratably, to pay any fees or premiums then due to any of the Lenders under the Loan Documents until paid in full,

(G) seventh, to pay interest accrued in respect of the Swing Loans until paid in full,

(H) eighth, to pay the principal of all Swing Loans until paid in full,

(I) ninth, ratably, to pay interest accrued in respect of the Advances (other than Protective Advances) until paid in full,

(J) tenth, ratably (i) to pay the principal of all Advances until paid in full, (ii) to Agent, to be held by Agent, for the benefit of Issuing Lender (and for the ratable benefit of each of the Lenders that have an obligation to pay to Agent, for the account of the Issuing Lender, a share of each Letter of Credit Disbursement), as cash collateral in an amount up to 105% of the Letter of Credit Usage (to the extent permitted by applicable law, such cash collateral shall be applied to the reimbursement of any Letter of Credit Disbursement as and when such disbursement occurs and, if a Letter of Credit expires undrawn, the cash collateral held by Agent in respect of such Letter of Credit shall, to the extent permitted by applicable law, be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof), and (iii) up to the Bank Product Reserve Amount in the aggregate (after taking into account any amounts previously paid pursuant to this clause (iii)) to the Bank Product Providers, with the amount for any Bank Product Provider to be based upon amounts then certified by such Bank Product Provider to Agent (in form and substance satisfactory to Agent) to be due and payable to such Bank Product Providers on account of Bank Product Obligations up to the Bank Product Reserve Amount established by Agent in respect of such Bank Product,

(K) eleventh, to pay any other Obligations other than Obligations owed to Defaulting Lenders (including being paid, ratably, to the Bank Product Providers on account of all amounts then due and payable in respect of Bank Product Obligations, with any balance to be paid to Agent, to be held by Agent, for the ratable benefit of the Bank Product Providers, as cash collateral (which cash collateral may be released by Agent to the applicable Bank Product Provider and applied by such Bank Product Provider to the payment or reimbursement of any amounts due and payable with respect to Bank Product Obligations owed to the applicable Bank Product Provider as and when such amounts first become due and payable and, if and at such time as all such Bank Product Obligations are paid or otherwise satisfied in full, the cash collateral held by Agent in respect of such Bank Product Obligations shall be reapplied pursuant to this Section 2.4(b)(ii), beginning with tier (A) hereof),

(L) twelfth, ratably to pay any Obligations owed to Defaulting Lenders; and

(M) thirteenth, to Borrower (to be wired to the Designated Account) or such other Person entitled thereto under applicable law.

(iii) Agent promptly shall distribute to each Lender, pursuant to the applicable wire instructions received from each Lender in writing, such funds as it may be entitled to receive, subject to a Settlement delay as provided in Section 2.3(e).

(iv) In each instance, so long as no Application Event has occurred and is continuing, Section 2.4(b)(i) shall not apply to any payment made by Borrower to Agent and specified by Borrower to be for the payment of specific Obligations then due and payable (or prepayable) under any provision of this Agreement or any other Loan Document.

(v) For purposes of Section 2.4(b)(ii), "paid in full" of a type of Obligation means payment in cash or immediately available funds of all amounts owing on account of such type of Obligation, including interest accrued after the commencement of any Insolvency Proceeding, default interest, interest on interest, and expense reimbursements, irrespective of whether any of the foregoing would be or is allowed or disallowed in whole or in part in any Insolvency Proceeding.

(vi) In the event of a direct conflict between the priority provisions of this Section 2.4 and any other provision contained in this Agreement or any other Loan Document, it is the intention of the parties hereto that such provisions be read together and construed, to the fullest extent possible, to be in concert with each other. In the event of any actual, irreconcilable conflict that cannot be resolved as aforesaid, if the conflict relates to the provisions of Section 2.3(g) and this Section 2.4, then the provisions of Section 2.3(g) shall control and govern, and if otherwise, then the terms and provisions of this Section 2.4 shall control and govern.

(c) **Reduction of Commitments**.

(i) **Revolver Commitments**. The Revolver Commitments shall terminate on the Maturity Date. Borrower may reduce the Revolver Commitments to an amount (which may be zero) not less than the sum of (A) the Revolver Usage as of such date, plus (B) the principal amount of all Advances not yet made as to which a request has been given by Borrower under Section 2.3(a), plus (C) the amount of all Letters of Credit not yet issued as to which a request has been given by Borrower pursuant to Section 2.11(a). Each such reduction shall be in an amount which is not less than $5,000,000 (unless the Revolver Commitments are being reduced to zero and the amount of the Revolver Commitments in effect immediately prior to such reduction are less than $5,000,000), shall be made by providing not less than 3 Business Days prior written notice to Agent and shall be irrevocable (subject to the right of the Borrower, in the case of the reduction of the Revolver Commitments to zero, to rescind or extend a termination notice pursuant to Section 3.5 hereto). Once reduced, the Revolver Commitments may not be increased. Each such reduction of the Revolver Commitments shall reduce the

Revolver Commitments of each Lender proportionately in accordance with its Pro Rata Share thereof. Any notice of reduction of the Revolver Commitments to zero shall be subject to the terms and conditions of Section 3.5 hereto.

(d) **Optional Prepayments**.

(i) **Advances**. Borrower may prepay the principal of any Advance at any time in whole or in part.

(e) **Mandatory Prepayments**.

(i) **Borrowing Base**. If, at any time, (A) the Revolver Usage on such date exceeds (B) the Borrowing Base (such excess being referred to as the "Borrowing Base Excess"), then Borrower shall immediately prepay the Obligations in accordance with Section 2.4(f)(i) in an aggregate amount equal to the Borrowing Base Excess.

(ii) **Dispositions**. Within 5 Business Days of the date of receipt by Borrower or any of its Subsidiaries of the Net Cash Proceeds of any voluntary or involuntary sale or disposition by Borrower or any of its Subsidiaries of ABL Priority Collateral, or Collateral if the Term Debt has been paid in full (other than in connection with a replacement or refinancing thereof permitted under the Term Debt Intercreditor Agreement) (including casualty losses or condemnations but excluding sales or dispositions of Collateral which qualify as Permitted Dispositions under clauses (a), (b), (c), (d), (e), (f), (i), (j), (k), (l), (m), (n) or (o) of the definition of Permitted Dispositions,) in excess of $500,000 per year, Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of such Net Cash Proceeds of the ABL Priority Collateral, or the Collateral if the Term Debt has been paid in full (other than in connection with a replacement or refinancing thereof permitted under the Term Debt Intercreditor Agreement) (including condemnation awards and payments in lieu thereof) received by such Person in connection with such sales or dispositions; provided that, so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) Borrower shall have given Agent prior written notice of Borrower's intention to apply such monies to the costs of replacement of the properties or assets that are the subject of such sale or disposition or the cost of purchase or construction of other assets useful in the business of Borrower or its Subsidiaries, (C) the monies are held in a Deposit Account in which Agent has a perfected first-priority security interest or Agent has established a reserve pursuant to Section 2.1(c) in such amount, and (D) Borrower or its Subsidiaries, as applicable, complete such replacement, purchase, or construction within 270 days after the initial receipt of such monies, then the Loan Party whose assets were the subject of such disposition shall have the option to apply such monies to the costs of replacement of the assets that are the subject of such sale or disposition or the costs of purchase or construction of other assets useful in the business of Borrower or such Subsidiary unless and to the extent that such applicable period shall have expired without such replacement, purchase, or construction being made or completed, in which case, any amounts remaining in the cash collateral account shall be paid to Agent and applied in accordance with Section 2.4(f)(ii); provided, however, that Borrower and its Subsidiaries shall not have the right to use such Net Cash Proceeds to make such replacements, purchases, or

construction in excess of $500,000 in any given fiscal year without the prior written consent of Agent. Nothing contained in this Section 2.4(e)(ii) shall permit Borrower or any of its Subsidiaries to sell or otherwise dispose of any assets other than in accordance with Section 6.4.

(iii) **Extraordinary Receipts**. At any time an Event of Default has occurred and is continuing, within 5 Business Days of the date of receipt by Borrower or any of its Subsidiaries of any Extraordinary Receipts in respect of ABL Priority Collateral, or the Collateral if the Term Debt has been paid in full (other than in connection with a replacement or refinancing thereof permitted under the Term Debt Intercreditor Agreement), Borrower shall prepay the outstanding principal amount of the Obligations in accordance with Section 2.4(f)(ii) in an amount equal to 100% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts and Taxes paid or payable in connection with such Extraordinary Receipts.

(f) **Application of Payments**.

(i) Each prepayment pursuant to Section 2.4(e)(i) shall, (A) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the Advances until paid in full, and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then extant Letter of Credit Usage, and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii).

(ii) Each prepayment pursuant to Section 2.4(e)(ii) or 2.4(e)(iii) above shall (A) so long as no Application Event shall have occurred and be continuing, be applied, *first*, to the outstanding principal amount of the Advances (without a corresponding permanent reduction in the Maximum Revolver Amount), until paid in full, and *second*, to cash collateralize the Letters of Credit in an amount equal to 105% of the then extant Letter of Credit Usage (without a corresponding permanent reduction in the Maximum Revolver Amount), and (B) if an Application Event shall have occurred and be continuing, be applied in the manner set forth in Section 2.4(b)(ii).

2.5. **Overadvances**.

If, at any time or for any reason, the amount of Obligations owed by Borrower to the Lender Group pursuant to Section 2.1 or Section 2.11 is greater than any of the limitations set forth in Section 2.1 or Section 2.11, as applicable (an "Overadvance"), Borrower shall immediately pay to Agent, in cash, the amount of such excess, which amount shall be used by Agent to reduce the Obligations in accordance with the priorities set forth in Section 2.4(b). Borrower promises to pay the Obligations (including principal, interest, fees, costs, and expenses) in full on the Maturity Date or, if earlier, on the date on which the Obligations (other than the Bank Product Obligations) become due and payable pursuant to the terms of this Agreement.

2.6. **Interest Rates and Letter of Credit Fee: Rates, Payments, and Calculations**.

(a) **Interest Rates**. Except as provided in Section 2.6(c), all Obligations (except for undrawn Letters of Credit) pursuant to the terms hereof shall bear interest on the Daily Balance thereof as follows:

(i) if the relevant Obligation is an Advance predicated on the Additional Availability Amount, at a per annum rate equal to the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 1 month and shall be determined on a daily basis) plus 4.50 percentage points. Notwithstanding any terms of this Agreement to the contrary, except as otherwise provided in Section 2.12(d)(ii), Advances predicated on the Additional Availability Amount shall in no event bear interest at the Base Rate or be made as, or converted to, Base Rate Loans;

(ii) if the relevant Obligation is a LIBOR Rate Loan not predicated on the Additional Availability Amount, at a per annum rate equal to the LIBOR Rate plus the LIBOR Rate Margin, and

(iii) otherwise, at a per annum rate equal to the Base Rate plus the Base Rate Margin.

(b) **Letter of Credit Fee**. Borrower shall pay Agent (for the ratable benefit of the Lenders with a Revolver Commitment, subject to any agreements between Agent and individual Lenders), a Letter of Credit fee (in addition to the charges, commissions, fees, and costs set forth in Section 2.11(e)) which shall accrue at a per annum rate equal to the LIBOR Rate Margin for Advances times the Daily Balance of the undrawn amount of all outstanding Letters of Credit.

(c) **Default Rate**. Upon the occurrence and during the continuation of an Event of Default and at the election of Agent at the direction of the Required Lenders,

(i) all Advances, together with any other Obligations charged to the Loan Account pursuant to the terms hereof, shall bear interest on the Daily Balance thereof at a per annum rate equal to 2 percentage points above the per annum rate otherwise applicable thereunder, and

(ii) the Letter of Credit fee provided for in Section 2.6(b) shall be increased to 2 percentage points above the per annum rate otherwise applicable hereunder.

(d) **Payment.** Except to the extent provided to the contrary in Section 2.10 or Section 2.12(a), all interest, all Letter of Credit fees, all other fees payable hereunder or under any of the other Loan Documents, and all costs, expenses, and Lender Group Expenses payable hereunder or under any of the other Loan Documents shall be due and payable, in arrears, on the first Business Day of each month at any time that Obligations or Commitments are outstanding. Borrower hereby authorizes Agent, from time to time without prior notice to Borrower, to charge all interest, Letter of Credit fees, and all other fees payable hereunder or under any of the other Loan Documents (in each case, as and when due and payable), all costs, expenses, and Lender

Group Expenses payable hereunder or under any of the other Loan Documents (in each case, as and when incurred), all charges, commissions, fees, and costs provided for in Section 2.11(e) (as and when accrued or incurred), all fees and costs provided for in Section 2.10 (as and when accrued or incurred), and all other payments as and when due and payable under any Loan Document or any Bank Product Agreement (including any amounts due and payable to the Bank Product Providers in respect of Bank Products) to the Loan Account, which amounts thereafter shall constitute Advances hereunder and shall accrue interest at the rate then applicable to Advances that are Base Rate Loans. Any interest, fees, costs, expenses, Lender Group Expenses, or other amounts payable hereunder or under any other Loan Document or under any Bank Product Agreement that are charged to the Loan Account shall thereafter constitute Advances hereunder and shall initially accrue interest at the rate then applicable to Advances that are Base Rate Loans (unless and until converted into LIBOR Rate Loans in accordance with the terms of this Agreement).

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

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

(g) **Obligations Predicated on the Additional Availability Amount**. For purposes of calculating interest, Advances shall first be deemed predicated on clause (c) of the definition of Borrowing Base, prior to giving effect to the other components of the Borrowing Base.

2.7. **Crediting Payments**.

The receipt of any payment item by Agent shall not be considered a payment on account unless such payment item is a wire transfer of immediately available federal funds made to Agent's Account or unless and until such payment item is honored when presented for payment. Should any payment item not be honored when presented for payment, then Borrower shall be deemed not to have made such payment and interest shall be calculated accordingly. Anything to the contrary contained herein notwithstanding, any payment item shall be deemed received by Agent only if it is received into Agent's Account on a Business Day on or before 11:00 a.m. (California time). If any payment item is received into Agent's Account on a non-

Business Day or after 11:00 a.m. (California time) on a Business Day, it shall be deemed to have been received by Agent as of the opening of business on the immediately following Business Day.

2.8. **Designated Account**.

Agent is authorized to make the Advances, and Issuing Lender is authorized to issue the Letters of Credit, under this Agreement based upon telephonic or other instructions received from anyone purporting to be an Authorized Person or, without instructions, if pursuant to Section 2.6(d). Borrower agrees to establish and maintain the Designated Account with the Designated Account Bank for the purpose of receiving the proceeds of the Advances requested by Borrower and made by Agent or the Lenders hereunder. Unless otherwise agreed by Agent and Borrower, any Advance or Swing Loan requested by Borrower and made by Agent or the Lenders hereunder shall be made to the Designated Account.

2.9. **Maintenance of Loan Account; Statements of Obligations**.

Agent shall maintain an account on its books in the name of Borrower (the "Loan Account") on which Borrower will be charged with all Advances (including Protective Advances and Swing Loans) made by Agent, Swing Lender, or the Lenders to Borrower or for Borrower's account, the Letters of Credit issued or arranged by Issuing Lender for Borrower's account, and with all other payment Obligations hereunder or under the other Loan Documents, including, accrued interest, fees and expenses, and Lender Group Expenses. In accordance with Section 2.7, the Loan Account will be credited with all payments received by Agent from Borrower or for Borrower's account. Agent shall render monthly statements regarding the Loan Account to Borrower, including principal, interest, fees, and including an itemization of all charges and expenses constituting Lender Group Expenses owing, and such statements, absent manifest error, shall be conclusively presumed to be correct and accurate and constitute an account stated between Borrower and the Lender Group unless, within 45 days after receipt thereof by Borrower, Borrower shall deliver to Agent written objection thereto describing the error or errors contained in any such statements; provided, that Borrower may deliver to Agent written objection with regard to any manifest error contained in any such statements at any time.

2.10. **Fees**.

Borrower shall pay to Agent,

(a) for the account of Agent, as and when due and payable under the terms of the Fee Letter, the fees set forth in the Fee Letter.

(b) for the ratable account of those Lenders with Revolver Commitments, on the first Business Day of each month from and after the Closing Date up to the first Business Day of the month prior to the Payoff Date and on the Payoff Date, an unused line fee in an amount equal to the Applicable Unused Revolver Fee times the result of (i) the aggregate amount of the Revolver Commitments, less (ii) the average Daily Balance of the Revolver Usage during the immediately preceding month (or portion thereof).

(c) Borrower shall pay to Agent, field examination, appraisal, and valuation fees and charges, as and when incurred or chargeable, as follows (i) a fee of $1,000 per day, per examiner, plus reasonable out-of-pocket expenses (including travel, meals, and lodging) for each field examination of the Loan Parties performed by personnel employed by Agent, and (ii) the fees or charges paid or incurred by Agent if it elects to employ the services of one or more third Persons to perform field examinations of the Loan Parties, to establish electronic collateral reporting systems, to appraise the Collateral, or any portion thereof, or to assess the Loan Parties' business valuation; provided, that (x) Agent shall not conduct an appraisal of Inventory during the period from and including the Closing Date through June 30, 2016 unless Borrower requests that Agent conduct an appraisal of Inventory during such period, in which case Borrower shall reimburse Agent in accordance with this Section 2.10 for such appraisal, and such appraisal shall be performed by a customary approved appraiser of Agent using a methodology consistent with appraisals of Borrower's Inventory conducted by Agent prior to the Closing Date, (y) during the period from and including the Closing Date through June 30, 2016, so long as no Event of Default shall have occurred and be continuing, Borrower shall not be obligated to reimburse Agent for more than two (2) field examinations and (z) after June 30, 2016, so long as no Event of Default shall have occurred and be continuing, Borrower shall not be obligated to reimburse Agent for more than one (1) field examination during any calendar year (increasing to two (2) field examinations in such calendar year if Excess Availability is less than 15% of the Maximum Revolver Amount at any time during such calendar year), or more than one (1) appraisal of the Inventory during any calendar year (increasing to two (2) Inventory appraisals in such calendar year if Excess Availability is less than 15% of the Maximum Revolver Amount at any time during such calendar year).

2.11. **Letters of Credit**.

(a) Subject to the terms and conditions of this Agreement, during the period commencing on the Closing Date and ending upon the termination of the Revolver Commitments, upon the request of Borrower made in accordance herewith, the Issuing Lender agrees to issue, or to cause an Underlying Issuer (including, as Issuing Lender's agent) to issue, a requested Letter of Credit. If Issuing Lender, at its option, elects to cause an Underlying Issuer to issue a requested Letter of Credit, then Issuing Lender agrees that it will enter into arrangements relative to the reimbursement of such Underlying Issuer (which may include, among, other means, by becoming an applicant with respect to such Letter of Credit or entering into undertakings which provide for reimbursements of such Underlying Issuer with respect to such Letter of Credit; each such obligation or undertaking, irrespective of whether in writing, a "Reimbursement Undertaking") with respect to Letters of Credit issued by such Underlying Issuer. By submitting a request to Issuing Lender for the issuance of a Letter of Credit, Borrower shall be deemed to have requested that Issuing Lender issue or that an Underlying Issuer issue the requested Letter of Credit and to have requested Issuing Lender to issue a Reimbursement Undertaking with respect to such requested Letter of Credit if it is to be issued by an Underlying Issuer (it being expressly acknowledged and agreed by Borrower that Borrower is and shall be deemed to be an applicant (within the meaning of Section 5-102(a)(2) of the Code) with respect to each Underlying Letter of Credit). Each request for the issuance of a Letter of Credit, or the amendment, renewal, or extension of any outstanding Letter of Credit, shall be made in writing by an Authorized Person and delivered to the Issuing Lender via hand delivery, telefacsimile, or other electronic method of transmission reasonably in advance of the

requested date of issuance, amendment, renewal, or extension. Each such request shall be in form and substance reasonably satisfactory to the Issuing Lender and shall specify (i) the amount of such Letter of Credit, (ii) the date of issuance, amendment, renewal, or extension of such Letter of Credit, (iii) the expiration date of such Letter of Credit, (iv) the name and address of the beneficiary of the Letter of Credit, and (v) such other information (including, in the case of an amendment, renewal, or extension, identification of the Letter of Credit to be so amended, renewed, or extended) as shall be necessary to prepare, amend, renew, or extend such Letter of Credit. Anything contained herein to the contrary notwithstanding, the Issuing Lender may, but shall not be obligated to, issue or cause the issuance of a Letter of Credit or to issue a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, that supports the obligations of Borrower or its Subsidiaries (1) in respect of an employment contract, or (2) at any time that one or more of the Lenders (other than Agent in its capacity as a Lender) is a Defaulting Lender, unless such Letter of Credit or Reimbursement Undertaking is fully supported as result of the following: (i) such Defaulting Lender's Pro Rata Share of such Letter of Credit or Reimbursement Undertaking shall be reallocated among all other Lenders with a Revolver Commitment that are non-Defaulting Lenders in proportion with their Pro Rata Shares of the Revolver Commitment, but only to the extent that, after giving effect to such reallocation, Revolver Usage does not exceed the sum of all such non-Defaulting Lenders' Pro Rata Share of the Revolver Commitment; and (ii) to the extent that such Letter of Credit or Reimbursement Undertaking exceeds the amount that is permitted to be reallocated pursuant to the immediately preceding clause (i), Borrower shall have provided cash collateral to Agent to hold on behalf of Borrower, on terms and conditions reasonably satisfactory to Issuing Lender and Agent, in an amount equal to such excess. Any Letter of Credit fee payable pursuant to Section 2.6(b) otherwise payable to a Defaulting Lender with respect to any portion of such Defaulting Lender's Pro Rata Share in any Letter of Credit reallocated pursuant to the preceding sentence shall be payable instead to the non-Defaulting Lenders in proportion to their Pro Rata Share of such non-Defaulting Lenders' Pro Rata Share in any Letter of Credit so allocated to them. In the event that a Defaulting Lender ceases to be a Defaulting Lender then the portion of such Defaulting Lender's Pro Rata Share in any Letter of Credit or Reimbursement Undertaking reallocated to non-Defaulting Lenders pursuant to this Section 2.11(a) shall be reallocated to such previously Defaulting Lender and, from and after (and in respect of Letter of Credit fees pursuant to Section 2.6(b) accruing from and after) the date of such reallocation, such previously Defaulting Lender shall be entitled to receive any Letter of Credit fees payable in respect of such previously Defaulting Lender's Pro Rata Share in any Letter of Credit or Reimbursement Undertaking previously reallocated to the non-Defaulting- Lenders.

The Issuing Lender shall have no obligation to issue a Letter of Credit or a Reimbursement Undertaking in respect of an Underlying Letter of Credit, in either case, if any of the following would result after giving effect to the requested issuance:

(i) the Letter of Credit Usage would exceed the Borrowing Base *less* the outstanding amount of Advances (inclusive of Swing Loans), or

(ii) the Letter of Credit Usage would exceed $20,000,000, or

(iii) the Letter of Credit Usage would exceed the Maximum Revolver Amount *less* the outstanding amount of Advances (including Swing Loans).

Each Letter of Credit shall be in form and substance reasonably acceptable to the Issuing Lender, including the requirement that the amounts payable thereunder must be payable in Dollars. If Issuing Lender makes a payment under a Letter of Credit or an Underlying Issuer makes a payment under an Underlying Letter of Credit, Borrower shall pay to Agent an amount equal to the applicable Letter of Credit Disbursement on the date such Letter of Credit Disbursement is made and, in the absence of such payment, the amount of the Letter of Credit Disbursement immediately and automatically shall be deemed to be an Advance hereunder and, initially, shall bear interest at the rate then applicable to Advances that are Base Rate Loans. If a Letter of Credit Disbursement is deemed to be an Advance hereunder, Borrower's obligation to pay the amount of such Letter of Credit Disbursement to Issuing Lender shall be discharged and replaced by the resulting Advance. Promptly following receipt by Agent of any payment from Borrower pursuant to this paragraph, Agent shall distribute such payment to the Issuing Lender or, to the extent that Lenders have made payments pursuant to Section 2.11(b) to reimburse the Issuing Lender, then to such Lenders and the Issuing Lender as their interests may appear.

(b) Promptly following receipt of a notice of a Letter of Credit Disbursement pursuant to Section 2.11(a), each Lender with a Revolver Commitment agrees to fund its Pro Rata Share of any Advance deemed made pursuant to Section 2.11(a) on the same terms and conditions as if Borrower had requested the amount thereof as an Advance and Agent shall promptly pay to Issuing Lender the amounts so received by it from the Lenders. By the issuance of a Letter of Credit or a Reimbursement Undertaking (or an amendment to a Letter of Credit or a Reimbursement Undertaking increasing the amount thereof) and without any further action on the part of the Issuing Lender or the Lenders with Revolver Commitments, the Issuing Lender shall be deemed to have granted to each Lender with a Revolver Commitment, and each Lender with a Revolver Commitment shall be deemed to have purchased, a participation in each Letter of Credit issued by Issuing Lender and each Reimbursement Undertaking, in an amount equal to its Pro Rata Share of such Letter of Credit or Reimbursement Undertaking, and each such Lender agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of any Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer under the applicable Letter of Credit. In consideration and in furtherance of the foregoing, each Lender with a Revolver Commitment hereby absolutely and unconditionally agrees to pay to Agent, for the account of the Issuing Lender, such Lender's Pro Rata Share of each Letter of Credit Disbursement made by Issuing Lender or an Underlying Issuer and not reimbursed by Borrower on the date due as provided in Section 2.11(a), or of any reimbursement payment required to be refunded to Borrower for any reason. Each Lender with a Revolver Commitment acknowledges and agrees that its obligation to deliver to Agent, for the account of the Issuing Lender, an amount equal to its respective Pro Rata Share of each Letter of Credit Disbursement pursuant to this Section 2.11(b) shall be absolute and unconditional and such remittance shall be made notwithstanding the occurrence or continuation of an Event of Default or Default or the failure to satisfy any condition set forth in Section 3. If any such Lender fails to make available to Agent the amount of such Lender's Pro Rata Share of a Letter of Credit Disbursement as provided in this Section, such Lender shall be deemed to be a Defaulting Lender and Agent (for the account of the Issuing Lender) shall be entitled to recover such amount on demand from such Lender together with interest thereon at the Defaulting Lender Rate until paid in full.

(c) Borrower hereby agrees to indemnify, save, defend, and hold the Lender Group and each Underlying Issuer harmless from any damage, loss, cost, expense, or liability

(other than Taxes, which shall be governed by Section 16), and reasonable attorneys fees incurred by Issuing Lender, any other member of the Lender Group, or any Underlying Issuer arising out of or in connection with any Reimbursement Undertaking or any Letter of Credit; provided, however, that Borrower shall not be obligated hereunder to indemnify for any loss, cost, expense, or liability that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer. Borrower understands and agrees that none of the Issuing Lender, the Lender Group, or any Underlying Issuer shall be liable for any error, negligence, or mistake, whether of omission or commission, in following Borrower's instructions or those contained in the Letter of Credit or any modifications, amendments, or supplements thereto, unless such error, negligence or mistake is caused by the gross negligence or willful misconduct of Issuing Lender, the Lender Group, or any Underlying Issuer. Borrower understands that the Reimbursement Undertakings may require Issuing Lender to indemnify the Underlying Issuer for certain costs or liabilities arising out of claims by Borrower against such Underlying Issuer. Borrower hereby agrees to indemnify, save, defend, and hold Issuing Lender and the other members of the Lender Group harmless with respect to any loss, cost, expense (including reasonable attorneys fees), or liability (other than Taxes, which shall be governed by Section 16) incurred by them as a result of the Issuing Lender's indemnification of an Underlying Issuer; provided, however, that Borrower shall not be obligated hereunder to indemnify for any such loss, cost, expense, or liability to the extent that it is caused by the gross negligence or willful misconduct of the Issuing Lender or any other member of the Lender Group. Borrower hereby acknowledges and agrees that none of the Issuing Lender, any other member of the Lender Group, or any Underlying Issuer shall be responsible for delays, errors, or omissions resulting from the malfunction of equipment in connection with any Letter of Credit.

(d) Borrower hereby authorizes and directs any Underlying Issuer to deliver to the Issuing Lender all instruments, documents, and other writings and property received by such Underlying Issuer pursuant to such Underlying Letter of Credit and to accept and rely upon the Issuing Lender's instructions with respect to all matters arising in connection with such Underlying Letter of Credit and the related application.

(e) Any and all issuance charges, usage charges, commissions, fees, and costs incurred by the Issuing Lender relating to Underlying Letters of Credit shall be Lender Group Expenses for purposes of this Agreement and shall be reimbursable immediately by Borrower to Agent for the account of the Issuing Lender; it being acknowledged and agreed by Borrower that, as of the Closing Date, the usage charge imposed by the Underlying Issuer is .825% per annum times the undrawn amount of each Underlying Letter of Credit, that such usage charge may be changed from time to time, and that the Underlying Issuer also imposes a schedule of charges for amendments, extensions, drawings, and renewals.

(f) If by reason of (i) any change after the Closing Date in any applicable law, treaty, rule, or regulation or any change in the interpretation or application thereof by any Governmental Authority, or (ii) compliance by the Issuing Lender, any other member of the Lender Group, or Underlying Issuer with any direction, request, or requirement (irrespective of whether having the force of law) of any Governmental Authority or monetary authority including, Regulation D of the Federal Reserve Board as from time to time in effect (and any successor thereto):

(i) any reserve, deposit, or similar requirement is or shall be imposed or modified in respect of any Letter of Credit issued or caused to be issued hereunder or hereby, or

(ii) there shall be imposed on the Issuing Lender, any other member of the Lender Group, or Underlying Issuer any other condition regarding any Letter of Credit or Reimbursement Undertaking,

and the result of the foregoing is to increase, directly or indirectly, the cost to the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer of issuing, making, guaranteeing, or maintaining any Reimbursement Undertaking or Letter of Credit or to reduce the amount receivable in respect thereof, then, and in any such case, Agent may, at any time within a reasonable period after the additional cost is incurred or the amount received is reduced, notify Borrower, and Borrower shall pay within 30 days after demand therefor, such amounts as Agent may specify to be necessary to compensate the Issuing Lender, any other member of the Lender Group, or an Underlying Issuer for such additional cost or reduced receipt, together with interest on such amount from the date of such demand until payment in full thereof at the rate then applicable to Base Rate Loans hereunder; provided, however, that Borrower shall not be required to provide any compensation pursuant to this Section 2.11(f) for any such amounts incurred more than 180 days prior to the date on which the demand for payment of such amounts is first made to Borrower; provided further, however, that if an event or circumstance giving rise to such amounts is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. The determination by Agent of any amount due pursuant to this Section 2.11(f), as set forth in a certificate setting forth the calculation thereof in reasonable detail, shall, in the absence of manifest or demonstrable error, be final and conclusive and binding on all of the parties hereto.

(g) [**Borrower and the Lender Group hereby acknowledge and agree that all Existing Letters of Credit shall constitute Letters of Credit under this Agreement on and after the Closing Date.**[1]]

2.12. **LIBOR Option**.

(a) **Interest and Interest Payment Dates.** In lieu of having interest charged at the rate based upon the Base Rate, Borrower shall have the option, subject to Section 2.12(b) below (the "LIBOR Option") to have interest on all or a portion of the Advances be charged (whether at the time when made (unless otherwise provided herein), upon conversion from a Base Rate Loan to a LIBOR Rate Loan, or upon continuation of a LIBOR Rate Loan as a LIBOR Rate Loan) at a rate of interest based upon the LIBOR Rate. Interest on LIBOR Rate Loans shall be payable on the earliest of (i) the last day of the Interest Period applicable thereto; (ii) the date on which all or any portion of the Obligations are accelerated pursuant to the terms hereof, or (iii) the date on which this Agreement is terminated pursuant to the terms hereof. On the last day of each applicable Interest Period, unless Borrower properly has exercised the LIBOR Option with respect thereto, the interest rate applicable to such LIBOR Rate Loan automatically shall convert to the rate of interest then applicable to Base Rate Loans of the same type hereunder. At

[1] [**NTD: To be deleted if no letters of credit are issued under the ABL DIP Facility.**]

any time that an Event of Default has occurred and is continuing, at the written election of the Required Lenders, Borrower no longer shall have the option to request that Advances bear interest at a rate based upon the LIBOR Rate.

(b) **LIBOR Election**.

(i) Borrower may, at any time and from time to time, so long as Borrower has not received a notice from Agent, after the occurrence and during the continuance of an Event of Default, of the election of the Required Lenders to terminate the right of Borrower to exercise the LIBOR Option during the continuance of such Event of Default, elect to exercise the LIBOR Option by notifying Agent prior to 11:00 a.m. (California time) at least 3 Business Days prior to the commencement of the proposed Interest Period (the "LIBOR Deadline"). Notice of Borrower's election of the LIBOR Option for a permitted portion of the Advances and an Interest Period pursuant to this Section shall be made by delivery to Agent of a LIBOR Notice received by Agent before the LIBOR Deadline, or by telephonic notice received by Agent before the LIBOR Deadline (to be confirmed by delivery to Agent of a LIBOR Notice received by Agent prior to 5:00 p.m. (California time) on the same day). Promptly upon its receipt of each such LIBOR Notice, Agent shall provide a copy thereof to each of the affected Lenders.

(ii) Each LIBOR Notice shall be irrevocable and binding on Borrower. In connection with each LIBOR Rate Loan, Borrower shall indemnify, defend, and hold Agent and the Lenders harmless against any loss, cost, or expense actually incurred by Agent or any Lender as a result of (A) the payment of any principal of any LIBOR Rate Loan other than on the last day of an Interest Period applicable thereto (including as a result of an Event of Default), (B) the conversion of any LIBOR Rate Loan other than on the last day of the Interest Period applicable thereto, or (C) the failure to borrow, convert, continue or prepay any LIBOR Rate Loan on the date specified in any LIBOR Notice delivered pursuant hereto (such losses, costs, or expenses, "Funding Losses"). A certificate of Agent or a Lender delivered to Borrower setting forth in reasonable detail any amount or amounts that Agent or such Lender is entitled to receive pursuant to this Section 2.12 shall be conclusive absent manifest error. Borrower shall pay such amount to Agent or the Lender, as applicable, within 30 days of the date of its receipt of such certificate. If a payment of a LIBOR Rate Loan on a day other than the last day of the applicable Interest Period would result in a Funding Loss, Agent may, in its sole discretion at the request of Borrower, hold the amount of such payment as cash collateral in support of the Obligations until the last day of such Interest Period and apply such amounts to the payment of the applicable LIBOR Rate Loan on such last day, it being agreed that Agent has no obligation to so defer the application of payments to any LIBOR Rate Loan and that, in the event that Agent does not defer such application, Borrower shall be obligated to pay any resulting Funding Losses.

(iii) Borrower shall have not more than 5 LIBOR Rate Loans in effect at any given time. Borrower only may exercise the LIBOR Option for proposed LIBOR Rate Loans of at least $1,000,000.

(c) **Conversion**. Borrower may convert LIBOR Rate Loans to Base Rate Loans at any time; provided, however, that in the event that LIBOR Rate Loans are converted or

prepaid on any date that is not the last day of the Interest Period applicable thereto, including as a result of any automatic prepayment through the required application by Agent of proceeds of Borrower's and its Subsidiaries' Collections in accordance with Section 2.4(b) or for any other reason, including early termination of the term of this Agreement or acceleration of all or any portion of the Obligations pursuant to the terms hereof, Borrower shall indemnify, defend, and hold Agent and the Lenders and their Participants harmless against any and all Funding Losses in accordance with Section 2.12 (b)(ii).

(d) **Special Provisions Applicable to LIBOR Rate**.

(i) The LIBOR Rate may be adjusted by Agent with respect to any Lender on a prospective basis to take into account any additional or increased costs to such Lender of maintaining or obtaining any eurodollar deposits or increased costs, in each case, due to changes in applicable law (other than changes in laws relative to Taxes, which shall be governed by Section 16) occurring subsequent to the commencement of the then applicable Interest Period, including changes in the reserve requirements imposed by the Board of Governors of the Federal Reserve System (or any successor), which additional or increased costs would increase the cost of funding or maintaining loans bearing interest at the LIBOR Rate. In any such event, the affected Lender shall give Borrower and Agent notice of such a determination and adjustment and Agent promptly shall transmit the notice to each other Lender and, upon its receipt of the notice from the affected Lender, Borrower may, by notice to such affected Lender (y) require such Lender to furnish to Borrower a statement setting forth the basis for adjusting such LIBOR Rate and the method for determining the amount of such adjustment, or (z) repay the LIBOR Rate Loans with respect to which such adjustment is made (together with any amounts due under Section 2.12(b)(ii)).

(ii) In the event that any change in market conditions or any law, regulation, treaty, or directive, or any change therein or in the interpretation or application thereof, shall at any time after the date hereof, in the reasonable opinion of any Lender, make it unlawful or impractical for such Lender to fund or maintain LIBOR Rate Loans or to continue such funding or maintaining, or to determine or charge interest rates at the LIBOR Rate, such Lender shall give notice of such changed circumstances to Agent and Borrower and Agent promptly shall transmit the notice to each other Lender and (y) in the case of any LIBOR Rate Loans of such Lender that are outstanding, the date specified in such Lender's notice shall be deemed to be the last day of the Interest Period of such LIBOR Rate Loans, and interest upon the LIBOR Rate Loans of such Lender thereafter shall accrue interest at the rate then applicable to Base Rate Loans (it being understood that, in lieu of bearing interest as provided in Section 2.6(a)(i), Advances predicated on the Additional Availability Amount shall bear interest at the Base Rate plus 3.50 percentage points (subject to adjustment as provided in Section 2.6(c))), and (z) Borrower shall not be entitled to elect the LIBOR Option until such Lender determines that it would no longer be unlawful or impractical to do so.

(e) **No Requirement of Matched Funding**. Anything to the contrary contained herein notwithstanding, neither Agent, nor any Lender, nor any of their Participants, is required actually to acquire eurodollar deposits to fund or otherwise match fund any Obligation as to which interest accrues at the LIBOR Rate.

2.13. **Capital Requirements**.

(a) If, after the date hereof, any Lender determines that (i) the adoption of or change in any law, rule, regulation or guideline regarding capital or reserve requirements for banks or bank holding companies, or any change in the interpretation, implementation or application thereof by any Governmental Authority charged with the administration thereof, or (ii) compliance by such Lender or its parent bank holding company with any guideline, request or directive of any such entity regarding capital adequacy (whether or not having the force of law), has the effect of reducing the return on such Lender's or such holding company's capital as a consequence of such Lender's Commitments hereunder to a level below that which such Lender or such holding company could have achieved but for such adoption, change, or compliance (taking into consideration such Lender's or such holding company's then existing policies with respect to capital adequacy and assuming the full utilization of such entity's capital) by any amount deemed by such Lender to be material, then such Lender may notify Borrower and Agent thereof. Following receipt of such notice, Borrower agrees to pay such Lender on demand the amount of such reduction of return on capital as and when such reduction is determined, payable within 30 days after presentation by such Lender of a statement in the amount and setting forth in reasonable detail such Lender's calculation thereof and the assumptions upon which such calculation was based (which statement shall be deemed true and correct absent manifest error). In determining such amount, such Lender may use any reasonable averaging and attribution methods. Failure or delay on the part of any Lender to demand compensation pursuant to this Section shall not constitute a waiver of such Lender's right to demand such compensation; provided that Borrower shall not be required to compensate a Lender pursuant to this Section for any reductions in return incurred more than 180 days prior to the date that such Lender notifies Borrower of such law, rule, regulation or guideline giving rise to such reductions and of such Lender's intention to claim compensation therefor; provided further that if such claim arises by reason of the adoption of or change in any law, rule, regulation or guideline that is retroactive, then the 180-day period referred to above shall be extended to include the period of retroactive effect thereof. Notwithstanding anything herein to the contrary (y) the Dodd-Frank Wall Street Reform and Consumer Protection Act and all requests, rules, guidelines, requirements and directives thereunder, issued in connection therewith or in the implementation thereof, and (z) all requests, rules, guidelines, requirements and directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervisions (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, shall in each case be deemed to be a change in law, rule, regulation or guideline as described in this Section 2.13 regardless of the date enacted, adopted, issued or implemented

(b) If any Lender requests additional or increased costs referred to in Section 2.12(d)(i) or amounts under Section 2.13(a) or sends a notice under Section 2.12(d)(ii) relative to changed circumstances (any such Lender, an "Affected Lender"), then such Affected Lender shall use reasonable efforts to promptly designate a different one of its lending offices or to assign its rights and obligations hereunder to another of its offices or branches, if (i) in the reasonable judgment of such Affected Lender, such designation or assignment would eliminate or reduce amounts payable pursuant to Section 2.12(d) or Section 2.13(a), as applicable, or would eliminate the illegality or impracticality of funding or maintaining LIBOR Rate Loans and (ii) in the reasonable judgment of such Affected Lender, such designation or assignment would

not subject it to any material unreimbursed cost or expense and would not otherwise be materially disadvantageous to it. Borrower agrees to pay all reasonable out-of-pocket costs and expenses incurred by such Affected Lender in connection with any such designation or assignment. If, after such reasonable efforts, such Affected Lender does not so designate a different one of its lending offices or assign its rights to another of its offices or branches so as to eliminate Borrower's obligation to pay any future amounts to such Affected Lender pursuant to Section 2.12(d) or Section 2.13(a), as applicable, or to enable Borrower to Obtain LIBOR Rate Loans, then Borrower (without prejudice to any amounts then due to such Affected Lender under Section 2.12(d) or Section 2.13(a), as applicable) may, unless prior to the effective date of any such assignment the Affected Lender withdraws its request for such additional amounts under Section 2.12(d) or Section 2.13(a), as applicable, or indicates that it is no longer unlawful or impractical to fund or maintain LIBOR Rate Loans, may seek a substitute Lender reasonably acceptable to Agent to purchase the Obligations owed to such Affected Lender and such Affected Lender's Commitments hereunder (a "Replacement Lender"), and if such Replacement Lender agrees to such purchase, such Affected Lender shall assign to the Replacement Lender its Obligations and Commitments, pursuant to an Assignment and Acceptance Agreement, and upon such purchase by the Replacement Lender, such Replacement Lender shall be deemed to be a "Lender" for purposes of this Agreement and such Affected Lender shall cease to be a "Lender" for purposes of this Agreement.

3. CONDITIONS; TERM OF AGREEMENT.

3.1. Conditions Precedent to Effectiveness and the Initial Extension of Credit.

The effectiveness of this Agreement and the obligation of each Lender to make its initial extension of credit provided for hereunder are subject to the fulfillment or waiver by Agent of each of the conditions precedent set forth on Schedule 3.1 (the making of such initial extension of credit by a Lender being conclusively deemed to be its satisfaction or waiver of the conditions precedent).

3.2. Conditions Precedent to all Extensions of Credit.

The obligation of the Lender Group (or any member thereof) to make any Advances hereunder (or to extend any other credit hereunder) at any time shall be subject to the following conditions precedent:

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

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

3.3. **Maturity**.

This Agreement shall continue in full force and effect for a term ending on August 11, 2017 (the "Maturity Date"). The foregoing notwithstanding, the Lender Group, upon the election of the Required Lenders, shall have the right to terminate its obligations under this Agreement immediately and without notice upon the occurrence and during the continuation of an Event of Default.

3.4. **Effect of Maturity**.

On the Maturity Date, all commitments of the Lender Group to provide additional credit hereunder shall automatically be terminated and all of the Obligations immediately shall become due and payable without notice or demand and Borrower shall be required to repay all of the Obligations in full. No termination of the obligations of the Lender Group (other than payment in full of the Obligations and termination of the Commitments) shall relieve or discharge any Loan Party of its duties, obligations, or covenants hereunder or under any other Loan Document and Agent's Liens in the Collateral shall continue to secure the Obligations and shall remain in effect until all Obligations have been paid in full and the Commitments have been terminated. When all of the Obligations have been paid in full and the Lender Group's obligations to provide additional credit under the Loan Documents have been terminated irrevocably, Agent will, at Borrower's sole expense, execute and deliver any termination statements, lien releases, discharges of security interests, and other similar discharge or release documents (and, if applicable, in recordable form) as are reasonably necessary to release, as of record, Agent's Liens and all notices of security interests and liens previously filed by Agent.

3.5. **Early Termination by Borrower**.

Borrower has the option, at any time upon 3 Business Days prior written notice to Agent, to terminate this Agreement and terminate the Commitments hereunder by repaying to Agent all of the Obligations in full. The foregoing notwithstanding, (a) if such repayment is to be funded with proceeds of an equity or debt issuance by Borrower or an Affiliate of Borrower or as a result of a sale of Borrower or its assets, any notice of termination may be conditioned upon the occurrence or non-occurrence of such event specified therein (including the effectiveness of other credit facilities), and (b) Borrower may extend the date of termination at any time with the consent of Agent (which consent shall not be unreasonably withheld or delayed).

3.6. [**Post-Closing Covenants**.]

4. **REPRESENTATIONS AND WARRANTIES**.

In order to induce the Lender Group to enter into this Agreement, Borrower makes the following representations and warranties to the Lender Group which shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text thereof), as of the Closing Date, and shall be true, correct, and complete, in all material respects (except that such materiality qualifier shall not be applicable to any representations and warranties that already are qualified or modified by materiality in the text

thereof), as of the date of the making of each Advance (or other extension of credit) made thereafter, as though made on and as of the date of such Advance (or other extension of credit) (except to the extent that such representations and warranties relate solely to an earlier date) and such representations and warranties shall survive the execution and delivery of this Agreement:

4.1. **Due Organization and Qualification; Subsidiaries**.

(a) Each Loan Party (i) is duly organized and existing and in good standing under the laws of the jurisdiction of its organization, (ii) is qualified to do business in any state where the failure to be so qualified could reasonably be expected to result in a Material Adverse Change, and (iii) has all requisite power and authority to own and operate its properties, to carry on its business as now conducted and as proposed to be conducted, to enter into the Loan Documents to which it is a party and to carry out the transactions contemplated thereby.

(b) [Reserved.]

(c) Set forth on Schedule 4.1(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement), is a complete and accurate list of the Loan Parties' direct and indirect Subsidiaries, showing: (i) the number of shares of each class of common and preferred Stock authorized for each of such Subsidiaries, and (ii) the number and the percentage of the outstanding shares of each such class owned directly or indirectly by Borrower. All of the outstanding capital Stock of each such Subsidiary has been validly issued and is fully paid and non-assessable.

(d) Except as set forth on Schedule 4.1(c), there are no subscriptions, options, warrants, or calls relating to any shares of Borrower's Subsidiaries' capital Stock, including any right of conversion or exchange under any outstanding security or other instrument. Neither Borrower nor any of its Subsidiaries is subject to any obligation (contingent or otherwise) to repurchase or otherwise acquire or retire any shares of Borrower's Subsidiaries' capital Stock or any security convertible into or exchangeable for any such capital Stock.

4.2. **Due Authorization; No Conflict**.

(a) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party have been duly authorized by all necessary action on the part of such Loan Party.

(b) As to each Loan Party, the execution, delivery, and performance by such Loan Party of the Loan Documents to which it is a party do not and will not (i) violate any material provision of federal, state, or local law or regulation applicable to any Loan Party or its Subsidiaries, the Governing Documents of any Loan Party or its Subsidiaries, or any order, judgment, or decree of any court or other Governmental Authority binding on any Loan Party or its Subsidiaries, (ii) conflict with, result in a breach of, or constitute (with due notice or lapse of time or both) a default under any Material Contract of any Loan Party or its Subsidiaries except to the extent that any such conflict, breach or default could not individually or in the aggregate reasonably be expected to have a Material Adverse Change, (iii) result in or require the creation or imposition of any Lien of any nature whatsoever upon any assets of any Loan Party, other than Permitted Liens, or (iv) require any approval of any Loan Party's interest holders or any

approval or consent of any Person under any Material Contract of any Loan Party, other than consents or approvals that have been obtained and that are still in force and effect and except, in the case of Material Contracts, for consents or approvals, the failure to obtain could not individually or in the aggregate reasonably be expected to cause a Material Adverse Change.

4.3. **Governmental Consents**.

The execution, delivery, and performance by each Loan Party of the Loan Documents to which such Loan Party is a party and the consummation of the transactions contemplated by the Loan Documents do not and will not require any registration with, consent, or approval of, or notice to, or other action with or by, any Governmental Authority, other than registrations, consents, approvals, notices, or other actions that have been obtained and that are still in force and effect and except for filings and recordings with respect to the Collateral to be made, or otherwise delivered to Agent for filing or recordation, as of the Closing Date (or such later date as agreed to by Agent).

4.4. **Binding Obligations; Perfected Liens**.

(a) Each Loan Document has been duly executed and delivered by each Loan Party that is a party thereto and is the legally valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its respective terms, except as enforcement may be limited by equitable principles or by bankruptcy, insolvency, reorganization, moratorium, or similar laws relating to or limiting creditors' rights generally.

(b) Subject to the filing of financing statements and the recordation of the Mortgages in the appropriate filing officers, Agent's Liens are validly created, perfected (other than (i) in respect of motor vehicles that are subject to a certificate of title and as to which Agent has not caused its Lien to be noted on the applicable certificate of title, (ii) any Deposit Accounts and Securities Accounts not subject to a Control Agreement as permitted by Section 6.11, and (iii) with respect to Collateral in which a security interest cannot be perfected under the UCC as in effect at the relevant time in the relevant jurisdiction), first priority Liens with respect to the ABL Priority Collateral and second priority Liens with respect to the Term Priority Collateral, subject only to Permitted Liens.

4.5. **Title to Assets; No Encumbrances**.

Each of the Loan Parties and its Subsidiaries has (a) good, sufficient and legal title to (in the case of fee interests in Real Property), (b) valid leasehold interests in (in the case of leasehold interests in real or personal property), and (c) good and marketable title to (in the case of all other personal property), all of their respective assets reflected in their most recent financial statements delivered pursuant to Section 5.1, in each case except for assets disposed of since the date of such financial statements to the extent permitted hereby. All of such assets are free and clear of Liens except for Permitted Liens.

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

(a) The name of (within the meaning of Section 9-503 of the Code) and jurisdiction of organization of each Loan Party and each of its Subsidiaries is set forth on Schedule 4.6(a) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(b) The chief executive office of each Loan Party and each of its Subsidiaries is located at the address indicated on Schedule 4.6(b) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(c) Each Loan Party's and each of its Subsidiaries' tax identification numbers and organizational identification numbers, if any, are identified on Schedule 4.6(c) (as such Schedule may be updated from time to time to reflect changes resulting from transactions permitted under this Agreement).

(d) As of the Closing Date, no Loan Party and no Subsidiary of a Loan Party holds any commercial tort claims that exceed $100,000 in amount, except as set forth on Schedule 4.6(d).

4.7. **Litigation**.

(a) Except as set forth on Schedule 4.7(b), there are no actions, suits, or proceedings pending or, to the knowledge of Borrower, after due inquiry, threatened in writing against a Loan Party or any of its Subsidiaries that either individually or in the aggregate could reasonably be expected to result in a Material Adverse Change.

(b) Schedule 4.7(b) sets forth a complete and accurate description, with respect to each of the actions, suits, or proceedings with asserted liabilities in excess of, or that could reasonably be expected to result in liabilities in excess of, $500,000 that, as of the Closing Date, is pending or, to the knowledge of Borrower, after due inquiry, threatened against a Loan Party or any of its Subsidiaries, of (i) the parties to such actions, suits, or proceedings, (ii) the nature of the dispute that is the subject of such actions, suits, or proceedings, (iii) the status, as of the Closing Date, with respect to such actions, suits, or proceedings, and (iv) whether any liability of the Loan Parties' and their Subsidiaries in connection with such actions, suits, or proceedings is covered by insurance.

4.8. **Compliance with Laws**.

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

4.9. **No Material Adverse Change**.

All historical financial statements relating to the Loan Parties and their Subsidiaries that have been delivered by a Loan Party to Agent have been prepared in accordance with GAAP (except, in the case of unaudited financial statements, for the lack of footnotes and being subject to year-end audit adjustments) and present fairly in all material respects, the Loan Parties' and their Subsidiaries' consolidated financial condition as of the date thereof and results of operations for the period then ended. Since the Confirmation Date, no event, circumstance, or change has occurred that has or could reasonably be expected to result in a Material Adverse Change with respect to the Loan Parties and their Subsidiaries.

4.10. **Fraudulent Transfer**.

(a) The Loan Parties, taken as a whole, are Solvent.

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

4.11. **Employee Benefits**.

No Loan Party, none of their Subsidiaries, nor any of their ERISA Affiliates maintains or contributes to any Benefit Plan.

4.12. **Environmental Condition**.

Except where any of the following could not reasonably be expected to result in a Material Adverse Change or as otherwise set forth on Schedule 4.12, (a) to Borrower's knowledge, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been used by a Loan Party, its Subsidiaries, or by previous owners or operators in the disposal of, or to produce, store, handle, treat, release, or transport, any Hazardous Materials, where such disposal, production, storage, handling, treatment, release or transport was in violation, in any material respect, of any applicable Environmental Law, (b) to Borrower's knowledge, after due inquiry, no Loan Party's nor any of its Subsidiaries' properties or assets has ever been designated or identified in any manner pursuant to any environmental protection statute as a Hazardous Materials disposal site, (c) no Loan Party nor any of its Subsidiaries has received notice that a Lien arising under any Environmental Law is attached or will become attached to any revenues or to any Real Property owned or operated by a Loan Party or its Subsidiaries, and (d) no Loan Party nor any of its Subsidiaries nor any of their respective facilities or operations is subject to any outstanding written order, consent decree, or settlement agreement with any Person relating to any Environmental Law or Environmental Liability.

4.13. **Intellectual Property**.

Each Loan Party and its Subsidiaries own, or hold licenses in, all trademarks, trade names, copyrights, patents, and licenses that are necessary to the conduct of its business as currently conducted, and attached hereto as Schedule 4.13 (as updated from time to time) is a

true, correct, and complete listing of all material trademarks, trade names, copyrights, patents, and licenses as to which Borrower or one of its Subsidiaries is the owner or is an exclusive licensee; provided, however, that Borrower may amend Schedule 4.13 to add additional intellectual property so long as such amendment occurs by written notice to Agent at the time that Borrower provides its Compliance Certificate pursuant to Section 5.1.

4.14. **Leases**.

Each Loan Party and its Subsidiaries enjoy peaceful and undisturbed possession under all leases material to their business and to which they are parties or under which they are operating, and, subject to Permitted Protests, all of such material leases are valid and subsisting and no material default by the applicable Loan Party or its Subsidiaries exists under any of them.

4.15. **Deposit Accounts and Securities Accounts**.

Set forth on Schedule 4.15 (as updated pursuant to the provisions of the Security Agreement from time to time) is a listing of all of the Loan Parties' and their Subsidiaries' Deposit Accounts and Securities Accounts, including, with respect to each bank or securities intermediary (a) the name and address of such Person, and (b) the account numbers of the Deposit Accounts or Securities Accounts maintained with such Person.

4.16. **Complete Disclosure**.

All factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrower's industry) furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender (including all information contained in the Schedules hereto or in the other Loan Documents) for purposes of or in connection with this Agreement or the other Loan Documents, and all other such factual information taken as a whole (other than forward-looking information and projections and information of a general economic nature and general information about Borrower's industry) hereafter furnished by or on behalf of a Loan Party or its Subsidiaries in writing to Agent or any Lender will be, true and accurate, in all material respects, on the date as of which such information is dated or certified and not incomplete by omitting to state any fact necessary to make such information (taken as a whole) not misleading in any material respect at such time in light of the circumstances under which such information was provided. The Projections delivered to Agent on **[_____, 2015]** represent, and as of the date on which any other Projections are delivered to Agent, such additional Projections represent, Borrower's good faith estimate, on the date such Projections are delivered, of the Loan Parties' and their Subsidiaries' future performance for the periods covered thereby based upon assumptions believed by Borrower to be reasonable at the time of the delivery thereof to Agent (it being understood that such Projections are subject to uncertainties and contingencies, many of which are beyond the control of the Loan Parties and their Subsidiaries, that no assurances can be given that such Projections will be realized, and that actual results may differ in a material manner from such Projections).

4.17. **Material Contracts**.

Set forth on Schedule 4.17 (as such Schedule may be updated from time to time in accordance herewith) is a reasonably detailed description of the Material Contracts of each Loan Party and its Subsidiaries as of the most recent date on which Borrower provided its Compliance Certificate pursuant to Section 5.1; provided, however, that Borrower may amend Schedule 4.17 to add additional Material Contracts so long as such amendment occurs by written notice to Agent on the date that Borrower provides its Compliance Certificate. Except for matters which, either individually or in the aggregate, could not reasonably be expected to result in a Material Adverse Change, each Material Contract (other than those that have expired at the end of their normal terms) (a) is in full force and effect and is binding upon and enforceable against the applicable Loan Party or its Subsidiary and, to Borrower's knowledge, after due inquiry, each other Person that is a party thereto in accordance with its terms, (b) has not been otherwise amended or modified (other than amendments or modifications permitted by Section 6.7(b)), and (c) is not in default due to the action or inaction of the applicable Loan Party or its Subsidiary.

4.18. **Patriot Act**.

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

4.19. **Indebtedness**.

Set forth on Schedule 4.19 is a true and complete list of all Indebtedness of each Loan Party and each of its Subsidiaries outstanding immediately prior to the Closing Date that is to remain outstanding immediately after giving effect to the closing hereunder on the Closing Date and such Schedule accurately sets forth the aggregate principal amount of such Indebtedness as of the Closing Date.

4.20. **Payment of Taxes**.

Except as otherwise permitted under Section 5.5 [**or as set forth in Schedule 4.20**], all tax returns and reports (other than tax returns and reports which in the aggregate involve tax liability of less than $100,000) of each Loan Party and its Subsidiaries required to be filed by any of them have been timely filed, and all taxes shown on such tax returns to be due and payable and all assessments, fees and other governmental charges upon a Loan Party and its Subsidiaries and upon their respective assets, income, businesses and franchises that are due and payable have been paid when due and payable (other than assessments, fees and other charges which in the aggregate do not exceed $100,000). Each Loan Party and each of its Subsidiaries

have made adequate provision to the extent required by, and in accordance with, GAAP for all taxes not yet due and payable. Except as otherwise permitted under Section 5.5 **[or as set forth in Schedule 4.20**], Borrower knows of no proposed tax assessment against a Loan Party or any of its Subsidiaries that is not being actively contested by such Loan Party or such Subsidiary diligently, in good faith, and by appropriate proceedings; provided such reserves or other appropriate provisions, if any, as shall be required in conformity with GAAP shall have been made or provided therefor.

4.21. **Margin Stock**.

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

4.22. **Governmental Regulation**.

No Loan Party nor any of its Subsidiaries is subject to regulation under the Federal Power Act or the Investment Company Act of 1940 or under any other federal or state statute or regulation which may limit its ability to incur Indebtedness or which may otherwise render all or any portion of the Obligations unenforceable. No Loan Party nor any of its Subsidiaries is a "registered investment company" or a company "controlled" by a "registered investment company" or a "principal underwriter" of a "registered investment company" as such terms are defined in the Investment Company Act of 1940.

4.23. **OFAC**.

No Loan Party nor any of its Subsidiaries is in violation of any of the country or list based economic and trade sanctions administered and enforced by OFAC. No Loan Party nor any of its Subsidiaries (a) is a Sanctioned Person or a Sanctioned Entity, (b) has its assets located in Sanctioned Entities, or (c) derives revenues from investments in, or transactions with Sanctioned Persons or Sanctioned Entities. No proceeds of any loan made hereunder will be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Entity.

4.24. **Employee and Labor Matters**.

There is (i) no unfair labor practice complaint pending or, to the knowledge of Borrower, threatened against Borrower or its Subsidiaries before any Governmental Authority and no grievance or arbitration proceeding pending or threatened against Borrower or its Subsidiaries which arises out of or under any collective bargaining agreement, except for any pending or threatened complaints or proceedings which could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change, (ii) no strike, labor dispute, labor slowdown, labor stoppage or similar action or grievance pending or threatened in writing against Borrower or its Subsidiaries that could reasonably be reasonably expected, individually or in the aggregate, to result in a Material Adverse Change, or (iii) as of the Closing

Date to the knowledge of Borrower, after due inquiry, no union representation question existing with respect to the employees of Borrower or its Subsidiaries and no union organizing activity taking place with respect to any of the employees of Borrower or its Subsidiaries. None of Borrower or its Subsidiaries has incurred any liability or obligation under the Worker Adjustment and Retraining Notification Act or similar state law, which remains unpaid or unsatisfied. The hours worked and payments made to employees of Borrower or its Subsidiaries have not been in violation of the Fair Labor Standards Act or any other applicable legal requirements, except to the extent such violations could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change. All material payments due from Borrower or its Subsidiaries on account of wages and employee health and welfare insurance and other benefits have been paid or accrued as a liability on the books of Borrower, except where the failure to do so could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change.

4.25. **Eligible Accounts**.

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

4.26. **Eligible Inventory**.

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

4.27. **Locations of Inventory and Equipment**.

The Inventory and Equipment (other than vehicles or Equipment out for repair) of the Loan Parties and their Subsidiaries are not stored with a bailee, warehouseman, or similar party, except as permitted by Section 6.16, and are located only at, or in-transit between or to, the locations identified on Schedule 4.27 (as such Schedule may be updated pursuant to Section 5.15).

4.28. **Inventory Records**.

Each Loan Party keeps correct and accurate records in all material respects itemizing and describing the type, quality, and quantity of its and its Subsidiaries' Inventory and the book value thereof.

4.29. **Hedge Agreement**.

On each date that any Hedge Agreement is executed by any Hedge Provider, Borrower and each other Loan Party satisfy all eligibility, suitability and other requirements under the Commodity Exchange Act (7 U.S.C. § 1, et seq., as in effect from time to time) and the Commodity Futures Trading Commission regulations.

5. **AFFIRMATIVE COVENANTS**.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties shall and shall cause each of their Subsidiaries to comply with each of the following:

5.1. **Financial Statements, Reports, Certificates**.

Deliver to Agent, with copies to each Lender, each of the financial statements, reports, and other items set forth on Schedule 5.1 no later than the times specified therein. In addition, Borrower agrees that no Subsidiary of a Loan Party will have a fiscal year different from that of Borrower. In addition, Borrower agrees to maintain a system of accounting that enables Borrower to produce financial statements in accordance with GAAP. Each Loan Party shall also (a) keep a reporting system that shows all additions, sales, claims, returns, and allowances with respect to its and its Subsidiaries' sales, and (b) maintain its billing systems/practices substantially as in effect as of the Closing Date provided that material modifications thereto may be made with notice to Agent.

5.2. **Collateral Reporting**.

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the reports set forth on Schedule 5.2 at the times specified therein. In addition, Borrower agrees to use commercially reasonable efforts in cooperation with Agent to facilitate and implement a system of electronic collateral reporting in order to provide electronic reporting of each of the items set forth on such Schedule.

5.3. **Existence**.

Except as otherwise permitted under Section 6.3 or Section 6.4, at all times maintain and preserve in full force and effect its existence (including being in good standing in its jurisdiction of organization) and all rights and franchises, licenses and permits material to its business.

5.4. **Maintenance of Properties**.

Maintain and preserve all of its assets that are necessary or useful in the proper conduct of its business in good working order and condition, ordinary wear, tear, and casualty excepted and Permitted Dispositions excepted, and comply with the material provisions of all material leases to which it is a party as lessee, so as to prevent the loss or forfeiture thereof, unless such provisions are the subject of a Permitted Protest.

5.5. **Taxes**.

Cause all assessments and taxes imposed, levied, or assessed against any Loan Party or its Subsidiaries, or any of their respective assets or in respect of any of its income, businesses, or franchises that, in each case, are due and payable after the Effective Date, to be paid in full, before delinquency or before the expiration of any extension period, except to the extent that (i) the aggregate amount of all such taxes and assessments so imposed, levied or assessed do not exceed $100,000 in the aggregate or (ii) the validity of such assessment or tax shall be the subject of a Permitted Protest and so long as, in the case of an assessment or tax that has or may become a Lien against any of the Collateral, such contest proceedings conclusively operate to stay the sale of any portion of the Collateral to satisfy such assessment or tax. Borrower will and will cause each of its Subsidiaries to make timely payment or deposit of all tax payments and withholding taxes required of it and them by applicable laws, including those laws concerning F.I.C.A., F.U.T.A., state disability, and local, state, and federal income taxes, and will, upon request, furnish Agent with proof reasonably satisfactory to Agent indicating that Borrower and its Subsidiaries have made such payments or deposits.

5.6. **Insurance**.

At Borrower's expense, maintain insurance respecting each of the Loan Parties' and their Subsidiaries' assets wherever located, covering loss or damage by fire, theft, explosion, and all other hazards and risks as ordinarily are insured against by other Persons engaged in the same or similar businesses. Borrower also shall maintain (with respect to each of the Loan Parties and their Subsidiaries) business interruption, general liability, product liability insurance, director's and officer's liability insurance, fiduciary liability insurance, and employment practices liability insurance, as well as insurance against larceny, embezzlement, and criminal misappropriation. All such policies of insurance shall be with responsible and reputable insurance companies reasonably acceptable to Agent and in such amounts as is carried generally in accordance with sound business practice by companies in similar businesses similarly situated and located and in any event in amount, adequacy and scope reasonably satisfactory to Agent. All property insurance policies covering the Collateral are to be made payable to Agent for the benefit of Agent and the Lenders, as their interests may appear, in case of loss, pursuant to a standard loss payable endorsement with a standard non contributory "lender" or "secured party" clause and are to contain such other provisions as Agent may reasonably require to fully protect the Lenders' interest in the Collateral and to any payments to be made under such policies. All certificates of property and general liability insurance are to be delivered to Agent, with the loss payable (but only in respect of Collateral) and additional insured endorsements in favor of Agent and shall provide for not less than 30 days (10 days in the case of non-payment) prior written notice to Agent of the exercise of any right of cancellation. If Borrower fails to maintain such insurance, Agent may arrange for such insurance, but at Borrower's expense and without any responsibility on Agent's part for obtaining the insurance, the solvency of the insurance companies, the adequacy of the coverage, or the collection of claims. Borrower shall give Agent prompt notice of any loss exceeding $500,000 covered by its casualty or business interruption insurance. Upon the occurrence and during the continuance of an Event of Default, Agent shall have the sole right to file claims under any property and general liability insurance policies in respect of the Collateral, to receive, receipt and give acquittance for any payments that may be payable thereunder, and to execute any and all endorsements, receipts, releases, assignments,

reassignments or other documents that may be reasonably necessary to effect the collection, compromise or settlement of any claims under any such insurance policies.

5.7. **Inspection**.

Permit Agent and each of its duly authorized representatives or agents to visit any of its properties and inspect any of its assets or books and records, to conduct appraisals and valuations, to examine and make copies of its books and records, and to discuss its affairs, finances, and accounts with, and to be advised as to the same by, its officers and employees at such reasonable times and intervals as Agent may designate and, so long as no Default or Event of Default exists, with reasonable prior notice to Borrower. Borrower's reimbursement obligations to Agent with respect to this Section 5.7 are subject to Section 2.10(c).

5.8. **Compliance with Laws**.

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

5.9. **Environmental**.

(a) Keep any property either owned or operated by Borrower or its Subsidiaries free of any Environmental Liens or post bonds or other financial assurances sufficient to satisfy the obligations or liability evidenced by such Environmental Liens, other than Environmental Liens that do not exceed $200,000 in the aggregate,

(b) Comply with Environmental Laws and provide to Agent documentation of such compliance which Agent reasonably requests except as could not reasonably be expected to result in a Material Adverse Change,

(c) Promptly notify Agent of any release of which Borrower has knowledge of a Hazardous Material in any reportable quantity from or onto property owned or operated by Borrower or its Subsidiaries and take any Remedial Actions required to abate said release or otherwise to come into compliance with applicable Environmental Law except as could not reasonably be expected to result in a Material Adverse Change, and

(d) Promptly, but in any event within 10 Business Days of its receipt thereof, provide Agent with written notice of any of the following: (i) notice that an Environmental Lien has been filed against any of the real or personal property of Borrower or its Subsidiaries, (ii) commencement of any Environmental Action or written notice that an Environmental Action will be filed against Borrower or its Subsidiaries, and (iii) written notice of a violation, citation, or other administrative order from a Governmental Authority.

5.10. **Disclosure Updates**.

Promptly and in no event later than 5 Business Days after obtaining knowledge thereof, notify Agent if any written information, exhibit, or report furnished to Agent or the Lenders contained, at the time it was furnished, any untrue statement of a material fact or omitted

to state any material fact necessary to make the statements contained therein not materially misleading in light of the circumstances in which made. The foregoing to the contrary notwithstanding, any notification pursuant to the foregoing provision will not cure or remedy the effect of the prior untrue statement of a material fact or omission of any material fact nor shall any such notification have the effect of amending or modifying this Agreement or any of the Schedules hereto.

5.11. **Formation of Subsidiaries**.

At the time that any Loan Party forms any direct or indirect Subsidiary or acquires any direct or indirect Subsidiary after the Closing Date, such Loan Party shall (a) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) cause any such new Subsidiary to provide to Agent a guaranty of the Obligations, together with such security documents (including mortgages with respect to any Real Property located in the United States having a fair market value at the time of such acquisition in excess of $250,000 owned in fee of such new Subsidiary), as well as appropriate financing statements (and with respect to all property subject to a mortgage, fixture filings), all in form and substance reasonably satisfactory to Agent (including being sufficient to grant Agent a first priority Lien (subject to Permitted Liens) in and to the assets of such newly formed or acquired Subsidiary constituting Collateral to secure the guaranty of the Obligations); provided that such guaranty, and such security documents shall not be required to be provided to Agent with respect to any Subsidiary of Borrower that is a CFC or Foreign Subsidiary Holdco if providing such documents would result in adverse tax consequences or the costs to the Loan Parties of providing such guaranty, executing any security documents or perfecting the security interests created thereby are unreasonably excessive (as determined by Agent in consultation with Borrower) in relation to the benefits of Agent and the Lenders of the security or guarantee afforded thereby, (b) to the extent the Security Agreement grants Agent a first priority Lien in Stock, within 10 days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) provide to Agent a pledge agreement and appropriate certificates and powers or financing statements, pledging all of the direct or beneficial ownership interest in such new Subsidiary reasonably satisfactory to Agent to secure the Obligations; provided that only 65% of the total outstanding voting Stock of any first tier Subsidiary of Borrower that is a CFC or Foreign Subsidiary Holdco (and none of the Stock of any Subsidiary of such CFC or Foreign Subsidiary Holdco) shall be required to be pledged if pledging a greater amount would result in adverse tax consequences or the costs to the Loan Parties of providing such pledge or perfecting the security interests created thereby are unreasonably excessive (as determined by Agent in consultation with Borrower) in relation to the benefits of Agent and the Lenders of the security or guarantee afforded thereby (which pledge, if reasonably requested by Agent, shall be governed by the laws of the jurisdiction of such Subsidiary), and (c) within 10 days of such formation or acquisition (or such later date as permitted by Agent in its sole discretion) provide to Agent all other documentation, including, if requested by Agent, one or more opinions of counsel reasonably satisfactory to Agent, which in its opinion is appropriate with respect to the execution and delivery of the applicable documentation referred to above (including policies of title insurance or other documentation and flood certification documentation with respect to all Real Property owned in fee and subject to a mortgage). Any document, agreement, or instrument executed or issued pursuant to this Section 5.11 shall be a Loan Document.

5.12. **Further Assurances**.

At any time upon the reasonable request of Agent, execute or deliver to Agent any and all financing statements, fixture filings, security agreements, pledges, assignments, endorsements of certificates of title, mortgages, deeds of trust, opinions of counsel, and all other documents (the "Additional Documents") that Agent may reasonably request in form and substance reasonably satisfactory to Agent, to create, perfect, and continue perfected or to better perfect Agent's Liens in the Collateral (whether now owned or hereafter arising or acquired, tangible or intangible, real or personal), to create and perfect Liens in favor of Agent in any Real Property owned in fee acquired by Borrower or its Subsidiaries after the Closing Date with a fair market value at the time of such acquisition in excess of $250,000, and in order to fully consummate all of the transactions contemplated hereby and under the other Loan Documents; provided that the foregoing shall not apply to any Subsidiary of Borrower that is a CFC or Foreign Subsidiary Holdco if providing such documents would result in adverse tax consequences or the costs to the Loan Parties of providing such documents are unreasonably excessive (as determined by Agent in consultation with Borrower) in relation to the benefits of Agent and the Lenders of the benefits afforded thereby. To the maximum extent permitted by applicable law, if Borrower refuses or fails to execute or deliver any reasonably requested Additional Documents within a reasonable period of time following the request to do so, Borrower hereby authorizes Agent to execute any such Additional Documents in the applicable Loan Party's or its Subsidiary's name, as applicable, and authorizes Agent to file such executed Additional Documents in any appropriate filing office. In furtherance and not in limitation of the foregoing, each Loan Party shall take such actions as Agent may reasonably request from time to time to ensure that the Obligations are guarantied by the Guarantors and are secured by the Collateral and all of the outstanding capital Stock of Borrower's Subsidiaries (subject to exceptions and limitations contained in the Loan Documents with respect to CFCs or Foreign Subsidiary Holdcos).

5.13. **Lender Meetings**.

Within 120 days after the close of each fiscal year of Borrower, at the request of Agent or of the Required Lenders and upon reasonable prior notice, hold a meeting (at a mutually agreeable location and time or, at the option of Agent, by conference call) with all Lenders who choose to attend such meeting at which meeting shall be reviewed the financial results of the previous fiscal year and the financial condition of Borrower and its Subsidiaries and the projections presented for the current fiscal year of Borrower.

5.14. **Material Contracts**.

Contemporaneously with the delivery of each Compliance Certificate pursuant to Section 5.1, provide Agent with copies of (a) each Material Contract entered into since the delivery of the previous Compliance Certificate, and (b) each material amendment or modification of any Material Contract entered into since the delivery of the previous Compliance Certificate.

5.15. **Locations of Inventory and Equipment**.

Keep each Loan Parties' and its Subsidiaries' Inventory and Equipment (other than vehicles and Equipment out for repair and Inventory that is in-transit) only at the locations identified on Schedule 4.27 and their chief executive offices only at the locations identified on Schedule 4.6(b); provided, however, that Borrower may amend Schedule 4.27 or Schedule 4.6(b) so long as such amendment occurs by written notice to Agent not less than 10 days (or such shorter period as the Agent may agree) prior to the date on which such Inventory or Equipment is moved to such new location or such chief executive office is relocated and so long as such new location is within the continental United States, and so long as, at the time of such written notification if such location contains Inventory intended to be included as Eligible Inventory, Borrower provides Agent a Collateral Access Agreement with respect thereto or Agent establishes a Rent Reserve under Section 2.1(c) for such location.

5.16. **Joint Lead Arrangers, Joint Book Runners and Co-Syndication Agent**.

Lenders hereby appoint WFCF and Bank of America, N.A. ("BofA") as Joint Lead Arrangers and Joint Book Runners, and BofA as Co-Syndication Agent. The Joint Lead Arrangers, Joint Book Runners and Co-Syndication Agent, in such capacities, shall not have any right, power, obligation, liability, responsibility, or duty under this Agreement other than those applicable to it in its capacity as a Lender, as Agent, as Swing Lender, or as Issuing Lender. Without limiting the foregoing, each of the Joint Lead Arrangers, Joint Book Runners and Co-Syndication Agent, in such capacities, shall not have or be deemed to have any fiduciary relationship with any Lender or any Loan Party. Each Lender, Agent, Swing Lender, Issuing Lender, and each Loan Party acknowledges that it has not relied, and will not rely, on the Joint Lead Arrangers, Joint Book Runners or Co-Syndication Agent in deciding to enter into this Agreement or in taking or not taking action hereunder. Each of the Joint Lead Arrangers, Joint Book Runners and Co-Syndication Agent, in such capacities, shall be entitled to resign at any time by giving notice to Agent and Borrower.

6. **NEGATIVE COVENANTS**.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, the Loan Parties will not and will not permit any of their Subsidiaries to do any of the following:

6.1. **Indebtedness**.

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

6.2. **Liens**.

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

6.3. **Restrictions on Fundamental Changes**.

(a) Other than in order to consummate a Permitted Acquisition, enter into any merger, consolidation, reorganization, or recapitalization, except for (i) any merger between Loan Parties, provided that Borrower must be the surviving entity of any such merger to which it is a party, (ii) any merger between a Loan Party and Subsidiaries of such Loan Party that are not Loan Parties so long as such Loan Party is the surviving entity of any such merger, and (iii) any merger between Subsidiaries of Borrower that are not Loan Parties,

(b) Liquidate, wind up, or dissolve itself (or suffer any liquidation or dissolution), except for (i) the liquidation or dissolution of non-operating Subsidiaries of Borrower with nominal assets and nominal liabilities, (ii) the liquidation or dissolution of a Loan Party (other than Borrower) or any of its wholly-owned Subsidiaries so long as all of the assets (including any interest in any Stock) of such liquidating or dissolving Loan Party or Subsidiary are transferred to a Loan Party that is not liquidating or dissolving, or (iii) the liquidation or dissolution of a Subsidiary of Borrower that is not a Loan Party (other than any such Subsidiary the Stock of which (or any portion thereof) is subject to a Lien in favor of Agent) so long as all of the assets of such liquidating or dissolving Subsidiary are transferred to a Subsidiary of Borrower that is not liquidating or dissolving, or

(c) Suspend or go out of a substantial portion of its or their business, except as permitted pursuant to clauses (a) or (b) above or in connection with the transactions permitted pursuant to Section 6.4.

6.4. **Disposal of Assets**.

Other than Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.11, convey, sell, lease, license, assign, transfer, or otherwise dispose of (or enter into an agreement (other than (i) agreements with respect to Permitted Dispositions or transactions expressly permitted by Sections 6.3 or 6.11 and (ii) agreements with respect to transactions that do not constitute Permitted Dispositions so long as such transactions would result in the payment in full of the Obligations within 90 days of the execution of such agreements, to convey, sell, lease, license, assign, transfer, or otherwise dispose of) any of Borrower's or its Subsidiaries assets.

6.5. **Change Name**.

Change Borrower's or any of its Subsidiaries' name, organizational identification number, state of organization or organizational identity; provided, however, that Borrower or any of its Subsidiaries may change its name upon at least 10 days prior written notice to Agent of such change (or a shorter period as may be agreed to by the Agent).

6.6. **Nature of Business**.

Make any change in the nature of its or their business or acquire any properties or assets that are not reasonably related to the conduct of such business activities; provided, however, that the foregoing shall not prevent Borrower and its Subsidiaries from engaging in any business that is reasonably related or ancillary to its or their business.

6.7. **Prepayments and Amendments**.

(a) Except in connection with Refinancing Indebtedness permitted by Section 6.1:

(i) optionally prepay, redeem, defease, purchase, or otherwise acquire any Indebtedness of Borrower or its Subsidiaries, other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances and (C) Term Debt pursuant to clause (ii) below,

(ii) make any payment of principal on account of the Term Debt or elect to pay in cash any or all PIK Interest (as defined in the Term Debt Loan Agreement) that has accrued in respect of the Term Debt, unless (A) no Default or Event of Default then exists or would result therefrom, (B) both before and immediately after giving effect to any such payment of principal, Excess Availability plus Qualified Cash is equal to or greater than $30,000,000, and (C) the aggregate amount of such payments, the payments made pursuant to Section 6.7(a)(iii) and all Restricted Junior Payments under Section 6.9(b)(iv) declared or made in any fiscal year of the Borrower shall not exceed $10,000,000 in the aggregate (the amount so expended, if other than in cash, to be as determined in good faith by the applicable Loan Party's board of directors, whose determination shall be conclusive and evidenced by a resolution of such board of directors); provided, however, that this Section 6.7(a)(ii) shall not prohibit or restrict (w) replacements or refinancings of the Term Debt to the extent permitted under the Term Debt Intercreditor Agreement, (x) payments of principal on account of the Term Debt from proceeds of Term Priority Collateral, (y) mandatory prepayments on account of the Term Debt as long as such mandatory prepayments are made in accordance with the Term Debt Loan Agreement in effect as of the Closing Date or (z) repayment of the Term Debt on the Maturity Date (as such term is defined in the Term Debt Loan Agreement in effect as of the Closing Date or as amended in accordance with Section 6.7(b) hereof);

(iii) make any payment on account of the Subordinated Term Debt, except for (A) regularly scheduled payments of interest on the obligations under the Subordinated Term Debt on a non-accelerated basis in accordance with Section [__] of the Subordinated Term Debt Loan Agreement as in effect on the Closing Date but only so long as (x) no Default or Event of Default then exists or would result therefrom, (y) both before and immediately after giving effect to any such payment of interest, Excess Availability plus Qualified Cash is equal to or greater than $30,000,000, and (z) the aggregate amount of such payments, the payments made pursuant to Section 6.7(a)(ii) and all Restricted Junior Payments under Section 6.9(b)(iv) declared or made in any fiscal year of the Borrower shall not exceed $10,000,000 in the aggregate (the amount so expended, if other than in cash, to be as determined in good faith by the applicable Loan Party's board of directors, whose determination shall be conclusive and evidenced by a resolution of such board of directors), and (B) payments made solely with Stock (other than Prohibited Preferred Stock) of Borrower, but only so long as no Default or Event of Default then exists or would result therefrom; or

(iv) except as provided in clause (iii) above, make any payment on account of Indebtedness that has been contractually subordinated in right of payment to

the Obligations if such payment is not permitted at such time under the subordination terms and conditions.

(b) Directly or indirectly, amend, modify, or change any of the terms or provisions of

(i) any agreement, instrument, document, indenture, or other writing evidencing or concerning Permitted Indebtedness (including, without limitation, (x) the Term Debt, if the effect of such amendment, modification or extension is to (1) increase the principal amount of the Term Debt or rate of interest payable thereon (except in connection with the imposition of a default rate of interest in accordance with the terms of the Term Debt Loan Agreement), (2) change the dates upon which payments of principal or interest on the Term Debt are due, (3) change or add any event of default or any covenant with respect to the Term Debt or (4) change or amend any other term of the Term Debt Documents if such change or amendment would result in a Default or Event of Default hereunder, would increase the obligations of any Loan Party, or could otherwise, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders and (y) the Subordinated Term Debt, except any amendment, modification or extension the sole purpose of which is to extend the maturity date of the Subordinated Term Debt and which does not increase the principal amount of the Subordinated Term Debt or the interest payable thereon and which amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders) other than (A) the Obligations in accordance with this Agreement, (B) Permitted Intercompany Advances, and (C) Indebtedness permitted under clauses (c), (e), (f), (h) and (i) of the definition of Permitted Indebtedness, except to the extent that any such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders,

(ii) any Material Contract except to the extent that such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders, or

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

6.8. **Tax Restructuring Agreements[; Trade Payable Restructuring Agreements]**.

Fail to make a payment when due under any Tax Restructuring Agreement [**or any Trade Payable Restructuring Agreement**], or otherwise fail to be in compliance with the terms of any Tax Restructuring Agreement [**or any Trade Payable Restructuring Agreement**] if such noncompliance would (a) result in such agreement becoming null and void, (b) result in the acceleration of the obligations described therein or (c) permit the holder of the Funded Indebtedness thereunder to accelerate the maturity of such Funded Indebtedness (whether or not the holder accelerates the maturity of such Funded Indebtedness as a result of such noncompliance).

6.9. **Restricted Junior Payments**[2].

(a) Prior to and including June 30, 2016, make any Restricted Junior Payment; provided, however, that, so long as it is permitted by law and Borrower is a Subsidiary of New Holdings that is treated as a disregarded entity or a partnership for U.S. federal income tax purposes or is treated as a member of New Holdings' consolidated group for the purposes of filing a consolidated federal income tax return, Borrower may make tax distributions to New Holdings to permit New Holdings to pay federal and state income taxes then due and owing by New Holdings under applicable law on the taxable income of Borrower, and other distributions to New Holdings for operating expenses incurred in the ordinary course of business of New Holdings related to maintaining its legal existence or incidental to owning the Stock of Borrower, so long as such operating expenses are incurred for the benefit of Borrower or are related to the business of Borrower and the aggregate amount of such distributions in any calendar year does not exceed $[**250,000**].

(b) After June 30, 2016, make any Restricted Junior Payment; provided, however, that, so long as it is permitted by law, and, solely with respect to clauses (i), (ii) and (iv) below, so long as no Default or Event of Default shall have occurred and be continuing or would result therefrom,

(i) Borrower may make distributions to former employees, officers, or directors of Borrower (or any spouses, ex-spouses, or estates of any of the foregoing) on account of redemptions of Stock of Borrower held by such Persons, provided, however, that the aggregate amount of such redemptions made by Borrower during the term of this Agreement plus the amount of Indebtedness outstanding under clause (j) of the definition of Permitted Indebtedness, does not exceed $1,000,000 per fiscal year,

(ii) Borrower may make distributions to former employees, officers, or directors of Borrower (or any spouses, ex-spouses, or estates of any of the foregoing), solely in the form of forgiveness of Indebtedness of such Persons owing to Borrower on account of repurchases of the Stock of Borrower held by such Persons; provided that such Indebtedness was incurred by such Persons solely to acquire Stock of Borrower,

(iii) So long as Borrower is a Subsidiary of New Holdings that is treated as a disregarded entity or a partnership for U.S. federal income tax purposes or is treated as a member of New Holdings' consolidated group for the purposes of filing a consolidated federal income tax return, Borrower may make tax distributions to New Holdings to permit New Holdings to pay federal and state income taxes then due and owing by New Holdings under applicable law on the taxable income of Borrower, and other distributions to New Holdings for operating expenses incurred in the ordinary course of business of New Holdings related to maintaining its legal existence or incidental to owning the Stock of Borrower, so long as such operating expenses are incurred for the benefit of Borrower or are related to the business of Borrower and the aggregate amount of such distributions in any calendar year does not exceed $250,000; and

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2 NTD: Subject to review of exit corporate organizational documents.

(iv) Borrower and the other Loan Parties may make Restricted Junior Payments provided that (A) both before and immediately after giving effect to any such Restricted Junior Payment, Excess Availability plus Qualified Cash is equal to or greater than $30,000,000, and (B) the aggregate amount of such Restricted Junior Payment and all other Restricted Junior Payments declared or made in any fiscal year of the Borrower, together with all principal payments paid in respect of the Term Debt pursuant to Section 6.7(a)(ii) and all interest paid in cash in respect of the Subordinated Term Debt pursuant to Section 6.7(a)(iii) in such fiscal year, shall not exceed $10,000,000 in the aggregate (the amount so expended, if other than in cash, to be as determined in good faith by the applicable Loan Party's board of directors, whose determination shall be conclusive and evidenced by a resolution of such board of directors).

6.10. **Accounting Methods**.

Modify or change its fiscal year or its method of accounting (other than as may be required to conform to GAAP).

6.11. **Investments; Controlled Investments**.

(a) Except for Permitted Investments, directly or indirectly, make or acquire any Investment.

(b) Other than (i) an aggregate amount of not more than $50,000 at any one time, in the case of Borrower and its Subsidiaries (other than those Subsidiaries that are CFCs), (ii) amounts deposited into Deposit Accounts specially and exclusively used for payroll, payroll taxes and other employee wage and benefit payments to or for Borrower's or its Subsidiaries' employees, (iii) an aggregate amount of not more than $50,000 (calculated at current exchange rates) at any one time, in the case of Subsidiaries of Borrower that are CFCs), (iv) amounts permitted to be deposited in the TL Deposit Account (as defined in the Term Debt Intercreditor Agreement) pursuant to the Term Debt Intercreditor Agreement, and (v) an aggregate amount not to exceed $50,000 at any one time deposited into Borrower's Deposit Account number 6567391 located at Prosperity Bank, and make, acquire, or permit to exist Permitted Investments consisting of cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts unless Borrower or its Subsidiary, as applicable, and the applicable bank or securities intermediary have entered into Control Agreements with Agent governing such Permitted Investments in order to perfect (and further establish) Agent's Liens in such Permitted Investments; provided, that in the case of a Subsidiary that is a CFC or Foreign Subsidiary Holdco, neither Borrower nor such Subsidiary should be required to enter into any such Control Agreements with respect to any such Permitted Investments to the extent such cash, Cash Equivalents, or amounts credited to Deposit Accounts or Securities Accounts are generated by such Subsidiary or any Subsidiary thereof. Except as provided in the preceding sentence, Borrower shall not and shall not permit its Subsidiaries to establish or maintain any Deposit Account or Securities Account unless Agent shall have received a Control Agreement in respect of such Deposit Account or Securities Account.

(c) Fail to establish and maintain the primary depository and treasury management relationships of Loan Parties (other than the TL Deposit Account (as defined in the Term Debt Intercreditor Agreement) with Wells Fargo.

6.12. **Transactions with Affiliates**.

Directly or indirectly enter into or permit to exist any transaction with any Affiliate of Borrower or any of its Subsidiaries except for:

(a) transactions (other than the payment of management, consulting, monitoring, or advisory fees) between Borrower or its Subsidiaries, on the one hand, and any Affiliate of Borrower or its Subsidiaries, on the other hand, so long as such transactions (i) are fully disclosed to Agent prior to the consummation thereof, if they involve one or more payments by Borrower or its Subsidiaries in excess of $5,000,000 for any single transaction or series of related transactions, (ii) if such transactions involve aggregate consideration in excess of $5,000,000, such transactions are no less favorable, taken as a whole, to Borrower or its Subsidiaries, as applicable, than would be obtained in an arm's length transaction with a non-Affiliate, and (iii) if such transactions involve aggregate consideration in excess of $15,000,000, the terms of such transactions have been approved by a majority of the Disinterested Directors of the Borrower or the applicable Subsidiary, or in the event there are no Disinterested Directors, a fairness opinion is provided by a nationally recognized appraisal or investment banking firm with respect to such transaction. For purposes of this clause (a), "Disinterested Directors" means one or more members of the board of directors of the Borrower or the applicable Subsidiary having no material direct or indirect financial interest in or with respect to such transaction (a member of any such board of directors shall not be deemed to have such a financial interest by reason of such member's holding Stock of the Borrower or any options, warrants or other rights in respect of such Stock).

(b) so long as it has been approved by Borrower's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, any indemnity provided for the benefit of directors (or comparable managers) of Borrower or its applicable Subsidiary,

(c) so long as it has been approved by Borrower's or its applicable Subsidiary's board of directors (or comparable governing body) in accordance with applicable law, the payment of reasonable compensation, severance, or employee benefit arrangements to employees, officers, and outside directors of Borrower and its Subsidiaries in the ordinary course of business and consistent with industry practice,

(d) transactions permitted by Sections 6.1, 6.3, 6.4, 6.9 or 6.11, or any Permitted Intercompany Advance,

(e) the transactions set forth on Schedule 6.12,

(f) the issuance of Stock of Borrower,

(g) the payment of reasonable and customary fees to members of the Board of Directors of Borrower not to exceed $250,000 in the aggregate per year consistent with past practice, and customary indemnities to members of the Board of Directors of Borrower or a Subsidiary of the Borrower,

(h) transactions between or among Borrower and/or its Subsidiaries that are Loan Parties,

(i) any contribution of capital to Borrower,

(j) entering into shareholder agreements, registration rights agreements (including amendments to existing similar agreements) and other similar agreements with equity holders of Borrower,

(k) [reserved], and

(l) any other transactions otherwise specifically permitted under the Loan Documents.

6.13. **Use of Proceeds**.

Use the proceeds of any loan made hereunder for any purpose other than (a) on the Closing Date, to (i) repay the ABL DIP Indebtedness and (ii) pay transactional fees, costs, and expenses incurred in connection with this Agreement, the other Loan Documents, and the transactions contemplated hereby and thereby, and (b) thereafter, consistent with the terms and conditions hereof, for their lawful and permitted purposes (including that no part of the proceeds of the loans made to Borrower will be used to purchase or carry any such Margin Stock or to extend credit to others for the purpose of purchasing or carrying any such margin stock or for any purpose that violates the provisions of Regulation T, U or X of the Board of Governors of the United States Federal Reserve).

6.14. **Limitation on Issuance of Stock**.

Except for the issuance or sale of common stock or Permitted Preferred Stock by Borrower, issue or sell or enter into any agreement or arrangement for the issuance and sale of any of its Stock.

6.15. **Consignments**.

Consign any of its or their Inventory or sell any of its or their Inventory on bill and hold, sale or return, sale on approval, or other conditional terms of sale; provided, that Borrower may consign Inventory with a value not to exceed $5,000,000 in the aggregate at any time outstanding pursuant to the terms of the APD Distributorship Agreement, provided that the Agent has received a letter agreement with respect to such Inventory executed by the applicable consignee and Borrower, in form and substance satisfactory to Agent, and such Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on such consignee's premises.

6.16. **Inventory with Bailees, Warehousemen or Processors**.

Store the Inventory of Borrower or its Subsidiaries at any time now or hereafter with a bailee, warehouseman, or similar party; provided, that Borrower may store Inventory with a value not to exceed $5,000,000 in the aggregate at any one location at any time outstanding with a processor or warehouseman, provided that the Agent has received a Collateral Access

Agreement (with respect to such Inventory located at a warehouse location) or letter agreement (with respect to such Inventory located at a processor location) executed by the applicable warehouseman or processor and the applicable Borrower or Subsidiary, in form and substance satisfactory to Agent, and such Inventory is segregated or otherwise separately identifiable from goods of others, if any, stored on such warehouseman's or processor's premises.

7. **FINANCIAL COVENANTS**.

Borrower covenants and agrees that, until termination of all of the Commitments and payment in full of the Obligations, Borrower will comply with each of the following financial covenants:

(a) **Excess Availability.** At all times during the period beginning on October 1, 2015 and ending on the date that the financial statements for the month ended January 31, 2016 are delivered to Agent pursuant to Schedule 5.1, maintain Excess Availability of at least $3,000,000.

(b) **Fixed Charge Coverage Ratio.** At all times during a Covenant Testing Period (including the first and last day thereof), have a Fixed Charge Coverage Ratio of at least 1.0 to 1.0, measured for the twelve month period ending on the last day of each fiscal month ending during the Covenant Testing Period (including the first and last day thereof); provided, however, that for any applicable period ending on or before November 30, 2016 during a Covenant Testing Period, the Fixed Charge Coverage Ratio shall be measured on a cumulative basis for the period commencing January 1, 2016 and ending on the last day of such applicable period.

(c) **Capital Expenditures.** Make Capital Expenditures in any fiscal year in an amount less than or equal to, but not greater than, the amount set forth in the following table for the applicable period:

Period	**Maximum Amount of Capital Expenditures**
From the Closing Date through the end of fiscal year 2015	$2,000,000
Fiscal year 2016	$8,000,000
Fiscal year 2017	$10,000,000

provided, however, that if the amount of Capital Expenditures permitted to be made in any period or fiscal year as set forth in the above table is greater than the actual amount of the Capital Expenditures actually made in such period or fiscal year (the amount by which such permitted Capital Expenditures for such period or such fiscal year exceeds the actual amount of Capital Expenditures for such period or such fiscal year, the "Excess Amount"), then the lesser of (i) such Excess Amount and (ii) 50% of the amount set forth in the above table for the next succeeding fiscal year (such lesser amount referred to as the "Carry-Over Amount") may be

carried forward to the next succeeding fiscal year (the "Succeeding Fiscal Year"); provided, further, that the Carry-Over Amount applicable to a particular Succeeding Fiscal Year may not be used in that fiscal year until the amount permitted above to be expended in such fiscal year has been first used in full and the Carry-Over Amount applicable to a particular Succeeding Fiscal Year may not be carried forward to another fiscal year.

8. **EVENTS OF DEFAULT**.

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

8.1. If Borrower fails to pay when due and payable, or when declared due and payable, (a) all or any portion of the Obligations consisting of interest, fees, or charges due the Lender Group, reimbursement of Lender Group Expenses, or other amounts (other than any portion thereof constituting principal) constituting Obligations (including any portion thereof that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), and such failure continues for a period of 3 Business Days, or (b) all or any portion of the principal of the Obligations;

8.2. If any Loan Party or any of its Subsidiaries:

(a) fails to perform or observe any covenant or other agreement contained in any of (i) Sections **[3.6,**[3]**]** 5.3 (solely if a Loan Party is not in good standing in its jurisdiction of organization), 5.6, 5.7 (solely if such Loan Party refuses to allow Agent or its representatives or agents to visit such Loan Party's properties, inspect its assets or books or records, examine and make copies of its books and records, or discuss such Loan Party's affairs, finances, and accounts with officers and employees of such Loan Party), 5.10, 5.11, 5.13, 5.14 or 5.15 of this Agreement, (ii) Sections 6.1 through 6.16 of this Agreement, (iii) Section 7 of this Agreement, or (iv) Section 6 of the Security Agreement;

(b) fails to perform or observe any covenant or other agreement contained in any of Sections 5.1 or 5.2 of this Agreement and such failure continues for a period of 2 days;

(c) fails to perform or observe any covenant or other agreement contained in any of Sections 5.3 (other than if a Loan Party is not in good standing in its jurisdiction of organization), 5.4, 5.5, 5.8, and 5.12 of this Agreement and such failure continues for a period of 10 days after the earlier of (i) the date on which such failure shall first become known to any Authorized Person or senior officer of a Loan Party or (ii) the date on which written notice thereof is given to a Loan Party by Agent; or

(d) fails to perform or observe any covenant or other agreement contained in this Agreement, or in any of the other Loan Documents, in each case, other than any such covenant or agreement that is the subject of another provision of this Section 8 (in which event such other provision of this Section 8 shall govern), and such failure continues for a period of 30 days after the earlier of (i) the date on which such failure shall first become known to any

[3] [**NTD: Reference to Section 3.6 to be included if there are post-closing covenants.**]

Authorized Person or senior officer of a Loan Party or (ii) the date on which written notice thereof is given to a Loan Party by Agent;

8.3. If one or more judgments, orders, or awards for the payment of money involving an aggregate amount of $500,000, or more (except to the extent fully covered (other than to the extent of customary deductibles) by insurance pursuant to which the insurer has not denied coverage) is entered or filed against a Loan Party or any of its Subsidiaries, or with respect to any of their respective assets, and either (a) there is a period of 30 consecutive days at any time after the entry of any such judgment, order, or award during which (1) the same is not discharged, satisfied, vacated, or bonded pending appeal, or (2) a stay of enforcement thereof is not in effect, or (b) enforcement proceedings are commenced upon such judgment, order, or award;

8.4. If an Insolvency Proceeding is commenced by a Loan Party or any of its Subsidiaries;

8.5. If an Insolvency Proceeding is commenced against a Loan Party or any of its Subsidiaries and any of the following events occur: (a) such Loan Party or such Subsidiary consents to the institution of such Insolvency Proceeding against it, (b) the petition commencing the Insolvency Proceeding is not timely controverted, (c) the petition commencing the Insolvency Proceeding is not dismissed within 60 calendar days of the date of the filing thereof, (d) an interim trustee is appointed to take possession of all or any substantial portion of the properties or assets of, or to operate all or any substantial portion of the business of, such Loan Party or its Subsidiary, or (e) an order for relief shall have been issued or entered therein;

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

8.7. If there is (a) an "Event of Default" as defined in the Term Debt Documents, (b) an "Event of Default" as defined in the Subordinated Term Debt Documents, (c) a default in one or more agreements to which a Loan Party or any of its Subsidiaries is a party with one or more third Persons relative to a Loan Party's or any of its Subsidiaries' Indebtedness involving an aggregate amount of $500,000 or more, and such default (i) occurs at the final maturity of the obligations thereunder, or (ii) results in a right by such third Person, irrespective of whether exercised, to accelerate the maturity of such Loan Party's or its Subsidiary's obligations thereunder, or (d) a default in or an involuntary early termination of one or more Hedge Agreements to which a Loan Party or any of its Subsidiaries is a party involving obligations which are due and payable in an aggregate amount of $500,000 or more;

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

8.9. If the obligation of any Guarantor under the Guaranty is limited or terminated by operation of law or by such Guarantor (other than in accordance with the terms of this Agreement);

8.10. If the Security Agreement or any other Loan Document that purports to create a Lien, shall, for any reason, fail or cease to create a valid and perfected (x) first priority Lien on the ABL Priority Collateral covered thereby or (y) second priority Lien on the Term Priority Collateral covered thereby, except, in each case, (a) to the extent of Permitted Liens which are permitted purchase money Liens or the interests of lessors under Capital Leases, (b) as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement, (c) with respect to Collateral the aggregate value of which, for all such Collateral, does not exceed at any time, $100,000, (c) as the result of an action or failure to act on the part of Agent or (d) to the extent such Security Agreement or other Loan Document does not require perfection of such Lien;

8.11. The validity or enforceability of any Loan Document shall at any time for any reason (other than solely as the result of an action or failure to act on the part of Agent) be declared to be null and void, or a proceeding shall be commenced by a Loan Party or its Subsidiaries, or by any Governmental Authority having jurisdiction over a Loan Party or its Subsidiaries, seeking to establish the invalidity or unenforceability thereof, or a Loan Party or its Subsidiaries shall deny that such Loan Party or its Subsidiaries has any liability or obligation purported to be created under any Loan Document; or

8.12. If a Change of Control occurs.

9. **RIGHTS AND REMEDIES**.

9.1. **Rights and Remedies**.

Upon the occurrence and during the continuation of an Event of Default, Agent may, and, at the instruction of the Required Lenders, shall (in each case under clauses (a) or (b) by written notice to Borrower), in addition to any other rights or remedies provided for hereunder or under any other Loan Document or by applicable law, do any one or more of the following:

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

(b) declare the Commitments terminated, whereupon the Commitments shall immediately be terminated together with (i) any obligation of any Lender hereunder to make Advances, (ii) the obligation of the Swing Lender to make Swing Loans, and (iii) the obligation of the Issuing Lender to issue Letters of Credit; and

(c) exercise all other rights and remedies available to Agent or the Lenders under the Loan Documents or applicable law.

The foregoing to the contrary notwithstanding, upon the occurrence of any Event of Default described in Section 8.4 or Section 8.5, in addition to the remedies set forth above, without any notice to Borrower or any other Person or any act by the Lender Group, the Commitments shall automatically terminate and the Obligations (other than the Bank Product Obligations), inclusive of all accrued and unpaid interest thereon and all fees and all other amounts owing under this Agreement or under any of the other Loan Documents, shall automatically and immediately become due and payable and Borrower shall be obligated to repay all of such Obligations in full, without presentment, demand, protest, or notice of any kind, all of which are expressly waived by Borrower.

9.2. **Remedies Cumulative**.

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

10. WAIVERS; INDEMNIFICATION.

10.1. **Demand; Protest; etc**.

Borrower waives demand, protest, notice of protest, notice of default or dishonor, notice of payment and nonpayment, nonpayment at maturity, release, compromise, settlement, extension, or renewal of documents, instruments, chattel paper, and guarantees at any time held by the Lender Group on which a Loan Party may in any way be liable.

10.2. **The Lender Group's Liability for Collateral**.

Borrower hereby agrees that: (a) so long as Agent complies with its obligations, if any, under the Code, the Lender Group shall not in any way or manner be liable or responsible for: (i) the safekeeping of the Collateral, except to the extent of any actual loss resulting from the bad faith, gross negligence or willful misconduct of the Agent or any of the Lender Group in possession of any such Collateral, (ii) any loss or damage thereto occurring or arising in any manner or fashion from any cause, (iii) any diminution in the value thereof, or (iv) any act or default of any carrier, warehouseman, bailee, forwarding agency, or other Person, and (b) all risk of loss, damage, or destruction of the Collateral shall be borne by Borrower.

10.3. **Indemnification**.

Borrower shall pay, indemnify, defend, and hold the Agent-Related Persons, the Lender-Related Persons, and each Participant (each, an "Indemnified Person") harmless (to the fullest extent permitted by law) from and against any and all claims, demands, suits, actions, investigations, proceedings, liabilities, fines, costs, penalties, and damages, and all reasonable fees and disbursements of attorneys, experts, or consultants and all other costs and expenses actually incurred in connection therewith or in connection with the enforcement of this indemnification (as and when they are incurred and irrespective of whether suit is brought), at

any time asserted against, imposed upon, or incurred by any of them (a) in connection with or as a result of or related to the execution and delivery (provided that Borrower shall not be liable for costs and expenses (including attorneys fees) of any Lender (other than WFCF) incurred in advising, structuring, drafting, reviewing, administering or syndicating the Loan Documents), enforcement, performance, or administration (including any restructuring or workout with respect hereto) of this Agreement, any of the other Loan Documents, or the transactions contemplated hereby or thereby or the monitoring of Borrower's and its Subsidiaries' compliance with the terms of the Loan Documents (provided, however, that the indemnification in this clause (a) shall not extend to (i) disputes solely between or among the Lenders, (ii) disputes solely between or among the Lenders and their respective Affiliates that do not relate to any action or omission of a Loan Party; it being understood and agreed that the indemnification in this clause (a) shall extend to Agent (but not the Lenders) relative to disputes between or among Agent on the one hand, and one or more Lenders, or one or more of their Affiliates, on the other hand; or (iii) any Taxes or any costs attributable to Taxes, which shall be governed by Section 16), (b) with respect to any investigation, litigation, or proceeding related to this Agreement, any other Loan Document, or the use of the proceeds of the credit provided hereunder (irrespective of whether any Indemnified Person is a party thereto), or any act, omission, event, or circumstance in any manner related thereto, and (c) in connection with or arising out of any presence or release of Hazardous Materials at, on, under, to or from any assets or properties owned, leased or operated by Borrower or any of its Subsidiaries or any Environmental Actions, Environmental Liabilities or Remedial Actions related in any way to any such assets or properties of Borrower or any of its Subsidiaries (each and all of the foregoing, the "Indemnified Liabilities"). The foregoing to the contrary notwithstanding, Borrower shall have no obligation to any Indemnified Person under this Section 10.3 with respect to any Indemnified Liability that a court of competent jurisdiction finally determines to have resulted from the bad faith, gross negligence or willful misconduct of such Indemnified Person or its officers, directors, employees, attorneys, or agents. This provision shall survive the termination of this Agreement and the repayment of the Obligations. If any Indemnified Person makes any payment to any other Indemnified Person with respect to an Indemnified Liability as to which Borrower was required to indemnify the Indemnified Person receiving such payment, the Indemnified Person making such payment is entitled to be indemnified and reimbursed by Borrower with respect thereto. **WITHOUT LIMITATION, THE FOREGOING INDEMNITY SHALL APPLY TO EACH INDEMNIFIED PERSON WITH RESPECT TO INDEMNIFIED LIABILITIES WHICH IN WHOLE OR IN PART ARE CAUSED BY OR ARISE OUT OF ANY NEGLIGENT ACT OR OMISSION OF SUCH INDEMNIFIED PERSON OR OF ANY OTHER PERSON.**

11. **NOTICES**.

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

If to Borrower:	**BOOMERANG TUBE, LLC** 14567 North Outer Forty Drive, 5th Floor Chesterfield, Missouri 63017 Attn: General Counsel or Chief Financial Officer Fax No. (636) 534-5657 Email: jason.roberts@boomerangtube.com
with copies to:	**DEBEVOISE & PLIMPTON LLP** 919 Third Avenue New York, New York 10022 Attn: My Chi To, Esq. Fax No. (212) 521-7015 Email: mcto@debevoise.com
If to Agent:	**WELLS FARGO CAPITAL FINANCE, LLC** 10 South Wacker Drive, Suite 1300 Chicago, Illinois 60606 Attn: Portfolio Manager—Boomerang Fax No. (312) 332-0424 Email: tony.vizgirda@wellsfargo.com
with copies to:	**GOLDBERG KOHN LTD.** 55 East Monroe Street, Suite 3300 Chicago, Illinois 60603 Attn: Gary Zussman, Esq. Fax No. (312) 863-7440 Email: gary.zussman@goldbergkohn.com

Any party hereto may change the address at which they are to receive notices hereunder, by notice in writing in the foregoing manner given to the other party. All notices or demands sent in accordance with this Section 11, shall be deemed received on the earlier of the date of actual receipt or 3 Business Days after the deposit thereof in the mail; provided, that (a) notices sent by overnight courier service shall be deemed to have been given when received, (b) notices by facsimile shall be deemed to have been given when sent (except that, if not given during normal business hours for the recipient, shall be deemed to have been given at the opening of business on the next Business Day for the recipient) and (c) notices by electronic mail shall be deemed received upon the sender's receipt of an acknowledgment from the intended recipient (such as by the "return receipt requested" function, as available, return email or other written acknowledgment).

12. **CHOICE OF LAW AND VENUE; JURY TRIAL WAIVER**.

(a) **THE VALIDITY OF THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS (UNLESS EXPRESSLY PROVIDED TO THE CONTRARY IN ANOTHER LOAN DOCUMENT IN RESPECT OF SUCH OTHER LOAN DOCUMENT), THE CONSTRUCTION, INTERPRETATION, AND ENFORCEMENT HEREOF AND THEREOF, AND THE RIGHTS OF THE PARTIES HERETO AND THERETO WITH RESPECT TO ALL MATTERS ARISING HEREUNDER OR**

THEREUNDER OR RELATED HERETO OR THERETO SHALL BE DETERMINED UNDER, GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF ILLINOIS.

(b) **THE PARTIES AGREE THAT ALL ACTIONS OR PROCEEDINGS ARISING IN CONNECTION WITH THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS SHALL BE TRIED AND LITIGATED ONLY IN THE STATE AND, TO THE EXTENT PERMITTED BY APPLICABLE LAW, FEDERAL COURTS LOCATED IN THE COUNTY OF COOK, STATE OF ILLINOIS; PROVIDED, HOWEVER, THAT ANY SUIT SEEKING ENFORCEMENT AGAINST ANY COLLATERAL OR OTHER PROPERTY MAY BE BROUGHT, AT AGENT'S OPTION, IN THE COURTS OF ANY JURISDICTION WHERE AGENT ELECTS TO BRING SUCH ACTION OR WHERE SUCH COLLATERAL OR OTHER PROPERTY MAY BE FOUND. BORROWER AND EACH MEMBER OF THE LENDER GROUP WAIVE, TO THE EXTENT PERMITTED UNDER APPLICABLE LAW, ANY RIGHT EACH MAY HAVE TO ASSERT THE DOCTRINE OF FORUM NON CONVENIENS OR TO OBJECT TO VENUE TO THE EXTENT ANY PROCEEDING IS BROUGHT IN ACCORDANCE WITH THIS SECTION 12(b).**

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

13. **ASSIGNMENTS AND PARTICIPATIONS; SUCCESSORS**.

13.1. **Assignments and Participations**.

(a) With the prior written consent of Borrower, which consent of Borrower shall not be unreasonably withheld, delayed or conditioned, and shall not be required (1) if an Event of Default has occurred and is continuing, or (2) in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender and with the prior written consent of Agent, which consent of Agent shall not be unreasonably withheld, delayed or conditioned, and shall not be required in connection with an assignment to a Person that is a Lender or an Affiliate (other than individuals) of a Lender, any Lender may assign and delegate to one or more assignees (each, an "Assignee"; provided, however, that no Loan Party or Affiliate of a Loan Party shall be permitted to become an Assignee) all or any portion of the Obligations, the Commitments and the other rights and obligations of such Lender hereunder and under the other Loan Documents, in a minimum amount (unless waived by Agent) of $5,000,000 (except such minimum amount shall not apply to (x) an assignment or delegation by any Lender

to any other Lender or an Affiliate of any Lender or (y) a group of new Lenders, each of which is an Affiliate of each other or a Related Fund of such new Lender to the extent that the aggregate amount to be assigned to all such new Lenders is at least $5,000,000); provided, however, that Borrower and Agent may continue to deal solely and directly with such Lender in connection with the interest so assigned to an Assignee until (i) written notice of such assignment, together with payment instructions, addresses, and related information with respect to the Assignee, have been given to Borrower and Agent by such Lender and the Assignee, (ii) such Lender and its Assignee have delivered to Borrower and Agent an Assignment and Acceptance and Agent has notified the assigning Lender of its receipt thereof in accordance with Section 13.1(b), and (iii) unless waived by Agent, the assigning Lender or Assignee has paid to Agent for Agent's separate account a processing fee in the amount of $3,500.

(b) From and after the date that Agent notifies the assigning Lender (with a copy to Borrower) that it has received an executed Assignment and Acceptance and, if applicable, payment of the required processing fee, (i) the Assignee thereunder shall be a party hereto and, to the extent that rights and obligations hereunder have been assigned to it pursuant to such Assignment and Acceptance, shall be a "Lender" and shall have the rights and obligations of a Lender under the Loan Documents, and (ii) the assigning Lender shall, to the extent that rights and obligations hereunder and under the other Loan Documents have been assigned by it pursuant to such Assignment and Acceptance, relinquish its rights (except with respect to Section 10.3) and be released from any future obligations under this Agreement (and in the case of an Assignment and Acceptance covering all or the remaining portion of an assigning Lender's rights and obligations under this Agreement and the other Loan Documents, such Lender shall cease to be a party hereto and thereto); provided, however, that nothing contained herein shall release any assigning Lender from obligations that survive the termination of this Agreement, including such assigning Lender's obligations under Section 15 and Section 17.9(a).

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

Assignee agrees that it will perform all of the obligations which by the terms of this Agreement are required to be performed by it as a Lender.

(d) Immediately upon Agent's receipt of the required processing fee, if applicable, and delivery of notice to the assigning Lender pursuant to Section 13.1(b), this Agreement shall be deemed to be amended to the extent, but only to the extent, necessary to reflect the addition of the Assignee and the resulting adjustment of the Commitments arising therefrom. The Commitment allocated to each Assignee shall reduce such Commitments of the assigning Lender *pro tanto*.

(e) Any Lender may at any time sell to one or more commercial banks, financial institutions, or other Persons (a "Participant") participating interests in all or any portion of its Obligations, its Commitment, and the other rights and interests of that Lender (the "Originating Lender") hereunder and under the other Loan Documents; provided, however, that (i) the Originating Lender shall remain a "Lender" for all purposes of this Agreement and the other Loan Documents and the Participant receiving the participating interest in the Obligations, the Commitments, and the other rights and interests of the Originating Lender hereunder shall not constitute a "Lender" hereunder or under the other Loan Documents and the Originating Lender's obligations under this Agreement shall remain unchanged, (ii) the Originating Lender shall remain solely responsible for the performance of such obligations, (iii) Borrower, Agent, and the Lenders shall continue to deal solely and directly with the Originating Lender in connection with the Originating Lender's rights and obligations under this Agreement and the other Loan Documents, (iv) no Lender shall transfer or grant any participating interest under which the Participant has the right to approve any amendment to, or any consent or waiver with respect to, this Agreement or any other Loan Document, except to the extent such amendment to, or consent or waiver with respect to this Agreement or of any other Loan Document would (A) extend the final maturity date of the Obligations hereunder in which such Participant is participating, (B) reduce the interest rate applicable to the Obligations hereunder in which such Participant is participating, (C) release all or substantially all of the Collateral or guaranties (except to the extent expressly provided herein or in any of the Loan Documents) supporting the Obligations hereunder in which such Participant is participating, (D) postpone the payment of, or reduce the amount of, the interest or fees payable to such Participant through such Lender (other than a waiver of default interest), or (E) decreases the amount or postpones the due dates of scheduled principal repayments or prepayments or premiums payable to such Participant through such Lender, and (v) all amounts payable by Borrower hereunder and under the other Loan Documents shall be determined as if such Lender had not sold such participation, except that, if amounts outstanding under this Agreement are due and unpaid, or shall have been declared or shall have become due and payable upon the occurrence of an Event of Default, each Participant shall be deemed to have the right of set off in respect of its participating interest in amounts owing under this Agreement to the same extent as if the amount of its participating interest were owing directly to it as a Lender under this Agreement. The rights of any Participant only shall be derivative through the Originating Lender with whom such Participant participates and no Participant shall have any rights under this Agreement or the other Loan Documents or any direct rights as to the other Lenders, Agent, Borrower, the Collections of Borrower or its Subsidiaries, the Collateral, or otherwise in respect of the Obligations. No Participant shall have the right to participate directly in the making of decisions by the Lenders among themselves.

(f) In connection with any such assignment or participation or proposed assignment or participation or any grant of a security interest in, or pledge of, its rights under and interest in this Agreement, a Lender may, subject to the provisions of Section 17.9, disclose all documents and information which it now or hereafter may have relating to Borrower and its Subsidiaries and their respective businesses.

(g) Any other provision in this Agreement notwithstanding, any Lender may at any time create a security interest in, or pledge, all or any portion of its rights under and interest in this Agreement in favor of any Federal Reserve Bank in accordance with Regulation A of the Federal Reserve Bank or U.S. Treasury Regulation 31 CFR §203.24, and such Federal Reserve Bank may enforce such pledge or security interest in any manner permitted under applicable law.

(h) Agent (as a non-fiduciary agent on behalf of Borrower) shall maintain, or cause to be maintained, a register (the "Register") on which it enters the name and address of each Lender as the registered owner of the Obligations and Commitments (and the principal amount thereof and stated interest thereon) held by such Lender (each, a "Registered Loan"). Other than in connection with an assignment by a Lender of all or any portion of its portion of the Obligations and Commitments to an Affiliate of such Lender or a Related Fund of such Lender (i) a Registered Loan (and the registered note, if any, evidencing the same) may be assigned or sold in whole or in part only by registration of such assignment or sale on the Register (and each registered note shall expressly so provide) and (ii) any assignment or sale of all or part of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by registration of such assignment or sale on the Register, together with the surrender of the registered note, if any, evidencing the same duly endorsed by (or accompanied by a written instrument of assignment or sale duly executed by) the holder of such registered note, whereupon, at the request of the designated assignee(s) or transferee(s), one or more new registered notes in the same aggregate principal amount shall be issued to the designated assignee(s) or transferee(s). Prior to the registration of assignment or sale of any Registered Loan (and the registered note, if any evidencing the same), Borrower shall treat the Person in whose name such Registered Loan (and the registered note, if any, evidencing the same) is registered as the owner thereof for the purpose of receiving all payments thereon and for all other purposes, notwithstanding notice to the contrary. In the case of any assignment by a Lender of all or any portion of its Obligations and Commitments to an Affiliate of such Lender or a Related Fund of such Lender, and which assignment is not recorded in the Register, the assigning Lender, on behalf of Borrower, shall maintain a register comparable to the Register.

(i) In the event that a Lender sells participations in the Registered Loan, such Lender, as a non-fiduciary agent on behalf of Borrower, shall maintain (or cause to be maintained) a register on which it enters the name of all participants in the Registered Loans held by it (and the principal amount (and stated interest thereon) of the portion of such Registered Loans that is subject to such participations) (the "Participant Register"). A Registered Loan (and the Registered Note, if any, evidencing the same) may be participated in whole or in part only by registration of such participation on the Participant Register (and each registered note shall expressly so provide). Any participation of such Registered Loan (and the registered note, if any, evidencing the same) may be effected only by the registration of such participation on the Participant Register.

(j) Agent shall make a copy of the Register (and each Lender shall make a copy of its Participant Register in the extent it has one) available for review by Borrower from time to time as Borrower may reasonably request.

13.2. **Successors**.

This Agreement shall bind and inure to the benefit of the respective successors and assigns of each of the parties; provided, however, that Borrower may not assign this Agreement or any rights or duties hereunder without the Lenders' prior written consent and any prohibited assignment shall be absolutely void *ab initio*. No consent to assignment by the Lenders shall release Borrower from its Obligations. A Lender may assign this Agreement and the other Loan Documents and its rights and duties hereunder and thereunder pursuant to Section 13.1 and, except as expressly required pursuant to Section 13.1, no consent or approval by Borrower is required in connection with any such assignment.

14. **AMENDMENTS; WAIVERS**.

14.1. **Amendments and Waivers**.

(a) No amendment, waiver or other modification of any provision of this Agreement or any other Loan Document (other than Control Agreements, Bank Product Agreements or the Fee Letter), and no consent with respect to any departure by Borrower therefrom, shall be effective unless the same shall be in writing and signed by the Required Lenders (or by Agent at the written request of the Required Lenders) and the Loan Parties that are party thereto and then any such waiver or consent shall be effective, but only in the specific instance and for the specific purpose for which given; provided, however, that no such waiver, amendment, or consent shall, unless in writing and signed by all of the Lenders directly affected thereby and all of the Loan Parties that are party thereto, do any of the following:

(i) increase the amount of or extend the expiration date of any Commitment of any Lender or amend, modify, or eliminate the last sentence of Section 2.4(c)(i),

(ii) postpone or delay any date fixed by this Agreement or any other Loan Document for any payment of principal, interest, fees, or other amounts due hereunder or under any other Loan Document,

(iii) reduce the principal of, or the rate of interest on, any loan or other extension of credit hereunder, or reduce any fees or other amounts payable hereunder or under any other Loan Document (except (y) in connection with the waiver of applicability of Section 2.6(c) (which waiver shall be effective with the written consent of the Required Lenders),

(iv) amend, modify, or eliminate this Section or any provision of this Agreement providing for consent or other action by all Lenders,

(v) other than as permitted by Section 15.11, release Agent's Lien in and to any of the Collateral,

(vi) amend, modify, or eliminate the definition of "Required Lenders" or "Pro Rata Share",

(vii) contractually subordinate any of Agent's Liens,

(viii) other than in connection with a merger, liquidation, dissolution or sale of such Person expressly permitted by the terms hereof or the other Loan Documents, release Borrower or any Guarantor from any obligation for the payment of money or consent to the assignment or transfer by Borrower or any Guarantor of any of its rights or duties under this Agreement or the other Loan Documents,

(ix) amend, modify, or eliminate any of the provisions of Section 2.4(b)(i) or (ii) or Section 2.4(e) or (f),

(x) amend, modify, or eliminate any of the provisions of Section 13.1(a) to permit a Loan Party to be permitted to become an Assignee, or

(xi) amend, modify, or eliminate the definition of Borrowing Base or any of the defined terms (including the definitions of Eligible Accounts, Eligible Inventory and Additional Availability Amount) that are used in such definition to the extent that any such change results in more credit being made available to Borrower based upon the Borrowing Base, but not otherwise, or the definition of Maximum Revolver Amount.

(b) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive (i) the definition of, or any of the terms or provisions of, the Fee Letter, without the written consent of Agent and Borrower (and shall not require the written consent of any of the Lenders), and (ii) any provision of Section 15 pertaining to Agent, or any other rights or duties of Agent under this Agreement or the other Loan Documents, without the written consent of Agent, Borrower, and the Required Lenders,

(c) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Issuing Lender, or any other rights or duties of Issuing Lender under this Agreement or the other Loan Documents, without the written consent of Issuing Lender, Agent, Borrower, and the Required Lenders,

(d) No amendment, waiver, modification, elimination, or consent shall amend, modify, or waive any provision of this Agreement or the other Loan Documents pertaining to Swing Lender, or any other rights or duties of Swing Lender under this Agreement or the other Loan Documents, without the written consent of Swing Lender, Agent, Borrower, and the Required Lenders,

(e) Anything in this Section 14.1 to the contrary notwithstanding, (i) any amendment, modification, elimination, waiver, consent, termination, or release of, or with respect to, any provision of this Agreement or any other Loan Document that relates only to the relationship of the Lender Group among themselves, and that does not affect the rights or obligations of Borrower, shall not require consent by or the agreement of any Loan Party, and

(ii) any amendment, waiver, modification, elimination, or consent of or with respect to any provision of this Agreement or any other Loan Document may be entered into without the consent of, or over the objection of, any Defaulting Lender.

14.2. **Replacement of Certain Lenders**.

(a) If (i) any action to be taken by the Lender Group or Agent hereunder requires the consent, authorization, or agreement of all Lenders or all Lenders affected thereby and if such action has received the consent, authorization, or agreement of the Required Lenders but not of all Lenders or all Lenders affected thereby, or (ii) any Lender makes a claim for compensation under Section 16, then Borrower or Agent, upon at least 5 Business Days prior irrevocable notice, may permanently replace any Lender that failed to give its consent, authorization, or agreement (a "Holdout Lender") or any Lender that made a claim for compensation (a "Tax Lender") with one or more Replacement Lenders, and the Holdout Lender or Tax Lender, as applicable, shall have no right to refuse to be replaced hereunder. Such notice to replace the Holdout Lender or Tax Lender, as applicable, shall specify an effective date for such replacement, which date shall not be later than 15 Business Days after the date such notice is given.

(b) Prior to the effective date of such replacement, the Holdout Lender or Tax Lender, as applicable, and each Replacement Lender shall execute and deliver an Assignment and Acceptance, subject only to the Holdout Lender or Tax Lender, as applicable, being repaid in full its share of the outstanding Obligations (without any premium or penalty of any kind whatsoever, but including (i) all interest, fees and other amounts that may be due in payable in respect thereof, and (ii) an assumption of its Pro Rata Share of the Letters of Credit). If the Holdout Lender or Tax Lender, as applicable, shall refuse or fail to execute and deliver any such Assignment and Acceptance prior to the effective date of such replacement, Agent may, but shall not be required to, execute and deliver such Assignment and Acceptance in the name or and on behalf of the Holdout Lender or Tax Lender, as applicable, and irrespective of whether Agent executes and delivers such Assignment and Acceptance, the Holdout Lender or Tax Lender, as applicable, shall be deemed to have executed and delivered such Assignment and Acceptance. The replacement of any Holdout Lender or Tax Lender, as applicable, shall be made in accordance with the terms of Section 13.1. Until such time as one or more Replacement Lenders shall have acquired all of the Obligations, the Commitments, and the other rights and obligations of the Holdout Lender or Tax Lender, as applicable, hereunder and under the other Loan Documents, the Holdout Lender or Tax Lender, as applicable, shall remain obligated to make the Holdout Lender's or Tax Lender's, as applicable, Pro Rata Share of Advances and to purchase a participation in each Letter of Credit, in an amount equal to its Pro Rata Share of such Letters of Credit.

14.3. **No Waivers; Cumulative Remedies**.

No failure by Agent or any Lender to exercise any right, remedy, or option under this Agreement or any other Loan Document, or delay by Agent or any Lender in exercising the same, will operate as a waiver thereof. No waiver by Agent or any Lender will be effective unless it is in writing, and then only to the extent specifically stated. No waiver by Agent or any Lender on any occasion shall affect or diminish Agent's and each Lender's rights thereafter to require strict performance by Borrower of any provision of this Agreement. Agent's and each

Lender's rights under this Agreement and the other Loan Documents will be cumulative and not exclusive of any other right or remedy that Agent or any Lender may have.

15. **AGENT; THE LENDER GROUP**.

15.1. **Appointment and Authorization of Agent**.

Each Lender hereby designates and appoints WFCF as its agent under this Agreement and the other Loan Documents and each Lender hereby irrevocably authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to designate, appoint, and authorize) Agent to execute and deliver each of the other Loan Documents on its behalf and to take such other action on its behalf under the provisions of this Agreement and each other Loan Document and to exercise such powers and perform such duties as are expressly delegated to Agent by the terms of this Agreement or any other Loan Document, together with such powers as are reasonably incidental thereto. Agent agrees to act as agent for and on behalf of the Lenders (and the Bank Product Providers) on the conditions contained in this Section 15. Any provision to the contrary contained elsewhere in this Agreement or in any other Loan Document notwithstanding, Agent shall not have any duties or responsibilities, except those expressly set forth herein or in the other Loan Documents, nor shall Agent have or be deemed to have any fiduciary relationship with any Lender (or Bank Product Provider), and no implied covenants, functions, responsibilities, duties, obligations or liabilities shall be read into this Agreement or any other Loan Document or otherwise exist against Agent. Without limiting the generality of the foregoing, the use of the term "agent" in this Agreement or the other Loan Documents with reference to Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead, such term is used merely as a matter of market custom, and is intended to create or reflect only a representative relationship between independent contracting parties. Each Lender hereby further authorizes (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to act as the secured party under each of the Loan Documents that create a Lien on any item of Collateral. Except as expressly otherwise provided in this Agreement, Agent shall have and may use its sole discretion with respect to exercising or refraining from exercising any discretionary rights or taking or refraining from taking any actions that Agent expressly is entitled to take or assert under or pursuant to this Agreement and the other Loan Documents. Without limiting the generality of the foregoing, or of any other provision of the Loan Documents that provides rights or powers to Agent, Lenders agree that Agent shall have the right to exercise the following powers as long as this Agreement remains in effect: (a) maintain, in accordance with its customary business practices, ledgers and records reflecting the status of the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, and related matters, (b) execute or file any and all financing or similar statements or notices, amendments, renewals, supplements, documents, instruments, proofs of claim, notices and other written agreements with respect to the Loan Documents, (c) make Advances, for itself or on behalf of Lenders, as provided in the Loan Documents, (d) exclusively receive, apply, and distribute the Collections of Borrower and its Subsidiaries as provided in the Loan Documents, (e) open and maintain such bank accounts and cash management arrangements as Agent deems necessary and appropriate in accordance with the Loan Documents for the foregoing purposes with respect to the Collateral and the Collections of Borrower and its Subsidiaries, (f) perform, exercise, and enforce any and all other rights and remedies of the Lender Group with respect to

Borrower or its Subsidiaries, the Obligations, the Collateral, the Collections of Borrower and its Subsidiaries, or otherwise related to any of same as provided in the Loan Documents, and (g) incur and pay such Lender Group Expenses as Agent may deem necessary or appropriate for the performance and fulfillment of its functions and powers pursuant to the Loan Documents.

15.2. **Delegation of Duties**.

Agent may execute any of its duties under this Agreement or any other Loan Document by or through agents, employees or attorneys in fact and shall be entitled to advice of counsel concerning all matters pertaining to such duties. Agent shall not be responsible for the negligence or misconduct of any agent or attorney in fact that it selects as long as such selection was made without gross negligence or willful misconduct.

15.3. **Liability of Agent**.

None of the Agent-Related Persons shall (a) be liable to the Lenders for any action taken or omitted to be taken by any of them under or in connection with this Agreement or any other Loan Document or the transactions contemplated hereby (except for its own gross negligence or willful misconduct), or (b) be responsible in any manner to any of the Lenders (or Bank Product Providers) for any recital, statement, representation or warranty made by Borrower or any of its Subsidiaries or Affiliates, or any officer or director thereof, contained in this Agreement or in any other Loan Document, or in any certificate, report, statement or other document referred to or provided for in, or received by Agent under or in connection with, this Agreement or any other Loan Document, or the validity, effectiveness, genuineness, enforceability or sufficiency of this Agreement or any other Loan Document, or for any failure of Borrower or its Subsidiaries or any other party to any Loan Document to perform its obligations hereunder or thereunder. No Agent-Related Person shall be under any obligation to any Lenders (or Bank Product Providers) to ascertain or to inquire as to the observance or performance of any of the agreements contained in, or conditions of, this Agreement or any other Loan Document, or to inspect the books and records or properties of Borrower or its Subsidiaries.

15.4. **Reliance by Agent**.

Agent shall be entitled to rely, and shall be fully protected in relying, upon any writing, resolution, notice, consent, certificate, affidavit, letter, telegram, telefacsimile or other electronic method of transmission, telex or telephone message, statement or other document or conversation believed by it to be genuine and correct and to have been signed, sent, or made by the proper Person or Persons, and upon advice and statements of legal counsel (including counsel to Borrower or counsel to any Lender), independent accountants and other experts selected by Agent. Agent shall be fully justified in failing or refusing to take any action under this Agreement or any other Loan Document unless Agent shall first receive such advice or concurrence of the Lenders as it deems appropriate and until such instructions are received, Agent shall act, or refrain from acting, as it deems advisable. If Agent so requests, it shall first be indemnified to its reasonable satisfaction by the Lenders (and, if it so elects, the Bank Product Providers) against any and all liability and expense that may be incurred by it by reason of taking or continuing to take any such action. Agent shall in all cases be fully protected in acting, or in refraining from acting, under this Agreement or any other Loan Document in accordance with a

request or consent of the Required Lenders and such request and any action taken or failure to act pursuant thereto shall be binding upon all of the Lenders (and Bank Product Providers).

15.5. **Notice of Default or Event of Default**.

Agent shall not be deemed to have knowledge or notice of the occurrence of any Default or Event of Default, except with respect to defaults in the payment of principal, interest, fees, and expenses required to be paid to Agent for the account of the Lenders and, except with respect to Events of Default of which Agent has actual knowledge, unless Agent shall have received written notice from a Lender or Borrower referring to this Agreement, describing such Default or Event of Default, and stating that such notice is a "notice of default." Agent promptly will notify the Lenders of its receipt of any such notice or of any Event of Default of which Agent has actual knowledge. If any Lender obtains actual knowledge of any Event of Default, such Lender promptly shall notify the other Lenders and Agent of such Event of Default. Each Lender shall be solely responsible for giving any notices to its Participants, if any. Subject to Section 15.4, Agent shall take such action with respect to such Default or Event of Default as may be requested by the Required Lenders in accordance with Section 9; provided, however, that unless and until Agent has received any such request, Agent may (but shall not be obligated to) take such action, or refrain from taking such action, with respect to such Default or Event of Default as it shall deem advisable.

15.6. **Credit Decision**.

Each Lender (and Bank Product Provider) acknowledges that none of the Agent-Related Persons has made any representation or warranty to it, and that no act by Agent hereinafter taken, including any review of the affairs of Borrower and its Subsidiaries or Affiliates, shall be deemed to constitute any representation or warranty by any Agent-Related Person to any Lender (or Bank Product Provider). Each Lender represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) to Agent that it has, independently and without reliance upon any Agent-Related Person and based on such due diligence, documents and information as it has deemed appropriate, made its own appraisal of and investigation into the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document, and all applicable bank regulatory laws relating to the transactions contemplated hereby, and made its own decision to enter into this Agreement and to extend credit to Borrower. Each Lender also represents (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to represent) that it will, independently and without reliance upon any Agent-Related Person and based on such documents and information as it shall deem appropriate at the time, continue to make its own credit analysis, appraisals and decisions in taking or not taking action under this Agreement and the other Loan Documents, and to make such investigations as it deems necessary to inform itself as to the business, prospects, operations, property, financial and other condition and creditworthiness of Borrower or any other Person party to a Loan Document. Except for notices, reports, and other documents expressly herein required to be furnished to the Lenders by Agent, Agent shall not have any duty or responsibility to provide any Lender (or Bank Product Provider) with any credit or other information concerning the business, prospects, operations, property, financial and other condition or creditworthiness of Borrower or any other Person party to a Loan Document that may come into the possession of any of the Agent-Related Persons. Each Lender acknowledges (and by

entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that Agent does not have any duty or responsibility, either initially or on a continuing basis (except to the extent, if any, that is expressly specified herein) to provide such Lender (or Bank Product Provider) with any credit or other information with respect to Borrower, its Affiliates or any of their respective business, legal, financial or other affairs, and irrespective of whether such information came into Agent's or its Affiliates' or representatives' possession before or after the date on which such Lender became a party to this Agreement (or such Bank Product Provider entered into a Bank Product Agreement).

15.7. **Costs and Expenses; Indemnification**.

Agent may incur and pay Lender Group Expenses to the extent Agent reasonably deems necessary or appropriate for the performance and fulfillment of its functions, powers, and obligations pursuant to the Loan Documents, including court costs, attorneys fees and expenses, fees and expenses of financial accountants, advisors, consultants, and appraisers, costs of collection by outside collection agencies, auctioneer fees and expenses, and costs of security guards or insurance premiums paid to maintain the Collateral, whether or not Borrower is obligated to reimburse Agent or Lenders for such expenses pursuant to this Agreement or otherwise. Agent is authorized and directed to deduct and retain sufficient amounts from the Collections of Borrower and its Subsidiaries received by Agent to reimburse Agent for such out-of-pocket costs and expenses prior to the distribution of any amounts to Lenders (or Bank Product Providers). In the event Agent is not reimbursed for such costs and expenses by Borrower or its Subsidiaries, each Lender hereby agrees that it is and shall be obligated to pay to Agent such Lender's ratable thereof. Whether or not the transactions contemplated hereby are consummated, each of the Lenders, on a ratable basis, shall indemnify and defend the Agent-Related Persons (to the extent not reimbursed by or on behalf of Borrower and without limiting the obligation of Borrower to do so) from and against any and all Indemnified Liabilities; provided, however, that no Lender shall be liable for the payment to any Agent-Related Person of any portion of such Indemnified Liabilities resulting solely from such Person's gross negligence or willful misconduct nor shall any Lender be liable for the obligations of any Defaulting Lender in failing to make an Advance or other extension of credit hereunder. Without limitation of the foregoing, each Lender shall reimburse Agent upon demand for such Lender's ratable share of any costs or out of pocket expenses (including attorneys, accountants, advisors, and consultants fees and expenses) incurred by Agent in connection with the preparation, execution, delivery, administration, modification, amendment, or enforcement (whether through negotiations, legal proceedings or otherwise) of, or legal advice in respect of rights or responsibilities under, this Agreement or any other Loan Document to the extent that Agent is not reimbursed for such expenses by or on behalf of Borrower. The undertaking in this Section shall survive the payment of all Obligations hereunder and the resignation or replacement of Agent.

15.8. **Agent in Individual Capacity**.

WFCF and its Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in, and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Document as though WFCF were not Agent hereunder, and, in each case, without notice to or consent of the

other members of the Lender Group. The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, WFCF or its Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders (or Bank Product Providers), and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver Agent will use its reasonable best efforts to obtain), Agent shall not be under any obligation to provide such information to them. The terms "Lender" and "Lenders" include WFCF in its individual capacity.

15.9. **Successor Agent**.

Agent may resign as Agent upon 30 days prior written notice to the Lenders (unless such notice is waived by the Required Lenders) and Borrower (unless such notice is waived by Borrower or an Event of Default exists) and without any notice to the Bank Product Providers. If Agent resigns under this Agreement, the Required Lenders shall be entitled, with (so long as no Event of Default has occurred and is continuing) the consent of Borrower (such consent not to be unreasonably withheld or delayed), appoint a successor Agent for the Lenders (and the Bank Product Providers). If, at the time that Agent's resignation is effective, it is acting as the Issuing Lender or the Swing Lender, such resignation shall also operate to effectuate its resignation as the Issuing Lender or the Swing Lender, as applicable, and it shall automatically be relieved of any further obligation to issue Letters of Credit, to cause the Underlying Issuer to issue Letters of Credit, or to make Swing Loans. If no successor Agent is appointed prior to the effective date of the resignation of Agent, Agent may appoint, after consulting with the Lenders and Borrower, a successor Agent with the consent of Borrower, which consent of Borrower shall not be unreasonably withheld, delayed or conditioned, and shall not be required if an Event of Default has occurred and is continuing. If Agent has materially breached or failed to perform any material provision of this Agreement or of applicable law, the Required Lenders may agree in writing to remove and replace Agent with a successor Agent from among the Lenders with (so long as no Event of Default has occurred and is continuing) the consent of Borrower (such consent not to be unreasonably withheld, delayed, or conditioned). In any such event, upon the acceptance of its appointment as successor Agent hereunder, such successor Agent shall succeed to all the rights, powers, and duties of the retiring Agent and the term "Agent" shall mean such successor Agent and the retiring Agent's appointment, powers, and duties as Agent shall be terminated. After any retiring Agent's resignation hereunder as Agent, the provisions of this Section 15 shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Agent under this Agreement. If no successor Agent has accepted appointment as Agent by the date which is 30 days following a retiring Agent's notice of resignation, the retiring Agent's resignation shall nevertheless thereupon become effective and the Lenders shall perform all of the duties of Agent hereunder until such time, if any, as the Lenders appoint a successor Agent as provided for above.

15.10. **Lender in Individual Capacity**.

Any Lender and its respective Affiliates may make loans to, issue letters of credit for the account of, accept deposits from, provide Bank Products to, acquire equity interests in

and generally engage in any kind of banking, trust, financial advisory, underwriting, or other business with Borrower and its Subsidiaries and Affiliates and any other Person party to any Loan Documents as though such Lender were not a Lender hereunder without notice to or consent of the other members of the Lender Group (or the Bank Product Providers). The other members of the Lender Group acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, pursuant to such activities, such Lender and its respective Affiliates may receive information regarding Borrower or its Affiliates or any other Person party to any Loan Documents that is subject to confidentiality obligations in favor of Borrower or such other Person and that prohibit the disclosure of such information to the Lenders, and the Lenders acknowledge (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to acknowledge) that, in such circumstances (and in the absence of a waiver of such confidentiality obligations, which waiver such Lender will use its reasonable best efforts to obtain), such Lender shall not be under any obligation to provide such information to them.

15.11. **Collateral Matters**.

(a) The Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent to release any Lien on any Collateral (i) upon the termination of the Commitments and payment and satisfaction in full by Borrower of all of the Obligations, (ii) constituting property being sold or disposed of if a release is required or desirable in connection therewith and if Borrower certifies to Agent that the sale or disposition is permitted under Section 6.4 (and Agent may rely conclusively on any such certificate, without further inquiry), (iii) constituting property in which Borrower or its Subsidiaries owned no interest at the time Agent's Lien was granted nor at any time thereafter, or (iv) constituting property leased to Borrower or its Subsidiaries under a lease that has expired or is terminated in a transaction permitted under this Agreement. The Loan Parties and the Lenders hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, based upon the instruction of the Required Lenders, to credit bid and purchase (either directly or through one or more acquisition vehicles) or to sell or otherwise dispose of (or to consent to any such sale or other disposition of) all or any portion of the Collateral at any sale thereof conducted by Agent under the provisions of the Code, including pursuant to Sections 9-610 or 9-620 of the Code, at any sale thereof conducted under the provisions of the Bankruptcy Code, including Section 363 of the Bankruptcy Code, or at any sale or foreclosure conducted by Agent (whether by judicial action or otherwise) in accordance with applicable law. Except as provided above, Agent will not execute and deliver a release of any Lien on any Collateral without the prior written authorization of (y) if the release is of all or substantially all of the Collateral, all of the Lenders (without requiring the authorization of the Bank Product Providers), or (z) otherwise, the Required Lenders (without requiring the authorization of the Bank Product Providers). Upon request by Agent or Borrower at any time, the Lenders will (and if so requested, the Bank Product Providers will) confirm in writing Agent's authority to release any such Liens on particular types or items of Collateral pursuant to this Section 15.11; provided, however, that (1) Agent shall not be required to execute any document necessary to evidence such release on terms that, in Agent's opinion, would expose Agent to liability or create any obligation or entail any consequence other than the release of such Lien without recourse, representation, or warranty, and (2) such release shall not in any manner discharge, affect, or impair the

Obligations or any Liens (other than those expressly being released) upon (or obligations of any Loan Party in respect of) all interests retained by any Loan Party, including, the proceeds of any sale, all of which shall continue to constitute part of the Collateral. The Lenders further hereby irrevocably authorize (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to authorize) Agent, at its option and in its sole discretion, to subordinate any Lien granted to or held by Agent under any Loan Document to the holder of any Permitted Lien on such property if such Permitted Lien secures Permitted Purchase Money Indebtedness.

(b) Agent shall have no obligation whatsoever to any of the Lenders (or the Bank Product Providers) to assure that the Collateral exists or is owned by Borrower or its Subsidiaries or is cared for, protected, or insured or has been encumbered, or that Agent's Liens have been properly or sufficiently or lawfully created, perfected, protected, or enforced or are entitled to any particular priority, or that any particular items of Collateral meet the eligibility criteria applicable in respect thereof or whether to impose, maintain, reduce, or eliminate any particular reserve hereunder or whether the amount of any such reserve is appropriate or not, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of the rights, authorities and powers granted or available to Agent pursuant to any of the Loan Documents, it being understood and agreed that in respect of the Collateral, or any act, omission, or event related thereto, subject to the terms and conditions contained herein, Agent may act in any manner it may deem appropriate, in its sole discretion given Agent's own interest in the Collateral in its capacity as one of the Lenders and that Agent shall have no other duty or liability whatsoever to any Lender (or Bank Product Provider) as to any of the foregoing, except as otherwise provided herein.

15.12. **Restrictions on Actions by Lenders; Sharing of Payments**.

(a) Each of the Lenders agrees that it shall not, without the express written consent of Agent, set off against the Obligations, any amounts owing by such Lender to Borrower or its Subsidiaries or any deposit accounts of Borrower or its Subsidiaries now or hereafter maintained with such Lender. Each of the Lenders further agrees that it shall not, unless specifically requested to do so in writing by Agent, take or cause to be taken any action, including, the commencement of any legal or equitable proceedings to enforce any Loan Document against Borrower or any Guarantor or to foreclose any Lien on, or otherwise enforce any security interest in, any of the Collateral.

(b) If, at any time or times any Lender shall receive (i) by payment, foreclosure, setoff, or otherwise, any proceeds of Collateral or any payments with respect to the Obligations, except for any such proceeds or payments received by such Lender from Agent pursuant to the terms of this Agreement, or (ii) payments from Agent in excess of such Lender's Pro Rata Share of all such distributions by Agent, such Lender promptly shall (A) turn the same over to Agent, in kind, and with such endorsements as may be required to negotiate the same to Agent, or in immediately available funds, as applicable, for the account of all of the Lenders and for application to the Obligations in accordance with the applicable provisions of this Agreement, or (B) purchase, without recourse or warranty, an undivided interest and participation in the Obligations owed to the other Lenders so that such excess payment received shall be applied ratably as among the Lenders in accordance with their Pro Rata Shares; provided, however, that to the extent that such excess payment received by the purchasing party

is thereafter recovered from it, those purchases of participations shall be rescinded in whole or in part, as applicable, and the applicable portion of the purchase price paid therefor shall be returned to such purchasing party, but without interest except to the extent that such purchasing party is required to pay interest in connection with the recovery of the excess payment.

15.13. **Agency for Perfection**.

Agent hereby appoints each other Lender (and each Bank Product Provider) as its agent (and each Lender hereby accepts (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to accept) such appointment) for the purpose of perfecting Agent's Liens in assets which, in accordance with Article 8 or Article 9, as applicable, of the Code can be perfected by possession or control. Should any Lender obtain possession or control of any such Collateral, such Lender shall notify Agent thereof, and, promptly upon Agent's request therefor shall deliver possession or control of such Collateral to Agent or in accordance with Agent's instructions.

15.14. **Payments by Agent to the Lenders**.

All payments to be made by Agent to the Lenders (or Bank Product Providers) shall be made by bank wire transfer of immediately available funds pursuant to such wire transfer instructions as each party may designate for itself by written notice to Agent. Concurrently with each such payment, Agent shall identify whether such payment (or any portion thereof) represents principal, premium, fees, or interest of the Obligations.

15.15. **Concerning the Collateral and Related Loan Documents**.

Each member of the Lender Group authorizes and directs Agent to enter into this Agreement and the other Loan Documents. Each member of the Lender Group agrees (and by entering into a Bank Product Agreement, each Bank Product Provider shall be deemed to agree) that any action taken by Agent in accordance with the terms of this Agreement or the other Loan Documents relating to the Collateral and the exercise by Agent of its powers set forth therein or herein, together with such other powers that are reasonably incidental thereto, shall be binding upon all of the Lenders (and such Bank Product Provider).

15.16. **Audits and Examination Reports; Confidentiality; Disclaimers by Lenders; Other Reports and Information**.

By becoming a party to this Agreement, each Lender:

(a) is deemed to have requested that Agent furnish such Lender, promptly after it becomes available, a copy of each field audit or examination report respecting Borrower or its Subsidiaries (each, a "Report") prepared by or at the request of Agent, and Agent shall so furnish each Lender with such Reports,

(b) expressly agrees and acknowledges that Agent does not (i) make any representation or warranty as to the accuracy of any Report, and (ii) shall not be liable for any information contained in any Report,

(c) expressly agrees and acknowledges that the Reports are not comprehensive audits or examinations, that Agent or other party performing any audit or examination will inspect only specific information regarding Borrower and its Subsidiaries and will rely significantly upon Borrower's and its Subsidiaries' books and records, as well as on representations of Loan Parties' personnel,

(d) agrees to keep all Reports and other material, non-public information regarding Borrower and its Subsidiaries and their operations, assets, and existing and contemplated business plans in a confidential manner in accordance with Section 17.9, and

(e) without limiting the generality of any other indemnification provision contained in this Agreement, agrees: (i) to hold Agent and any other Lender preparing a Report harmless from any action the indemnifying Lender may take or fail to take or any conclusion the indemnifying Lender may reach or draw from any Report in connection with any loans or other credit accommodations that the indemnifying Lender has made or may make to Borrower, or the indemnifying Lender's participation in, or the indemnifying Lender's purchase of, a loan or loans of Borrower, and (ii) to pay and protect, and indemnify, defend and hold Agent, and any such other Lender preparing a Report harmless from and against, the claims, actions, proceedings, damages, costs, expenses, and other amounts (including, attorneys fees and costs) incurred by Agent and any such other Lender preparing a Report as the direct or indirect result of any third parties who might obtain all or part of any Report through the indemnifying Lender.

In addition to the foregoing: (x) any Lender may from time to time request of Agent in writing that Agent provide to such Lender a copy of any report or document provided by Borrower or its Subsidiaries to Agent that has not been contemporaneously provided by Borrower or such Subsidiary to such Lender, and, upon receipt of such request, Agent promptly shall provide a copy of same to such Lender, (y) to the extent that Agent is entitled, under any provision of the Loan Documents, to request additional reports or information from Borrower or its Subsidiaries, any Lender may, from time to time, reasonably request Agent to exercise such right as specified in such Lender's notice to Agent, whereupon Agent promptly shall request of Borrower the additional reports or information reasonably specified by such Lender, and, upon receipt thereof from Borrower or such Subsidiary, Agent promptly shall provide a copy of same to such Lender, and (z) any time that Agent renders to Borrower a statement regarding the Loan Account, Agent shall send a copy of such statement to each Lender.

15.17. **Several Obligations; No Liability**.

Notwithstanding that certain of the Loan Documents now or hereafter may have been or will be executed only by or in favor of Agent in its capacity as such, and not by or in favor of the Lenders, any and all obligations on the part of Agent (if any) to make any credit available hereunder shall constitute the several (and not joint) obligations of the respective Lenders on a ratable basis, according to their respective Commitments, to make an amount of such credit not to exceed, in principal amount, at any one time outstanding, the amount of their respective Commitments. Nothing contained herein shall confer upon any Lender any interest in, or subject any Lender to any liability for, or in respect of, the business, assets, profits, losses, or liabilities of any other Lender. Each Lender shall be solely responsible for notifying its Participants of any matters relating to the Loan Documents to the extent any such notice may be required, and no Lender shall have any obligation, duty, or liability to any Participant of any

other Lender. Except as provided in Section 15.7, no member of the Lender Group shall have any liability for the acts of any other member of the Lender Group. No Lender shall be responsible to Borrower or any other Person for any failure by any other Lender (or Bank Product Provider) to fulfill its obligations to make credit available hereunder, nor to advance for such Lender (or Bank Product Provider) or on its behalf, nor to take any other action on behalf of such Lender (or Bank Product Provider) hereunder or in connection with the financing contemplated herein.

16. **WITHHOLDING TAXES**.

(a) All payments made by Borrower hereunder or under any note or other Loan Document will be made without setoff, counterclaim, or other defense. In addition, all such payments will be made free and clear of, and without deduction or withholding for, any present or future Taxes, and in the event any deduction or withholding of Taxes is required, Borrower shall comply with the next sentence of this Section 16(a). If any Taxes are so levied or imposed, Borrower agrees to pay the full amount of such Taxes to the applicable taxing authority and if such Tax is an Indemnified Tax, Borrower shall pay to the Agent and Lenders such additional amounts as may be necessary so that every payment of all amounts due under this Agreement, any note, or Loan Document, including any amount paid pursuant to this Section 16(a) after withholding or deduction for or on account of any Taxes, will not be less than the amount provided for herein; provided, however, that Borrower shall not be required to increase any such amounts if the increase in such amount payable results from Agent's or such Lender's own willful misconduct or gross negligence (as finally determined by a court of competent jurisdiction). Borrower will furnish to Agent as promptly as possible after the date the payment of any Tax is due pursuant to applicable law, certified copies of tax receipts evidencing such payment by Borrower. The Loan Parties shall jointly and severally indemnify each Indemnified Person (as defined in Section 10.3) (collectively a "Tax Indemnitee") for the full amount of Indemnified Taxes arising in connection with this Agreement or any other Loan Document or breach thereof by any Loan Party (including, without limitation, any Indemnified Taxes imposed or asserted on, or attributable to, amounts payable under this Section 16) imposed on, or paid by, such Tax Indemnitee and all reasonable costs and expenses related thereto (including fees and disbursements of attorneys and other tax professionals), as and when they are incurred and irrespective of whether suit is brought, whether or not such Indemnified Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority (other than Indemnified Taxes and additional amounts that a court of competent jurisdiction finally determines to have resulted from the gross negligence or willful misconduct of such Tax Indemnitee). The obligations of the Loan Parties under this Section 16 shall survive the termination of this Agreement, the resignation and replacement of the Agent, and the repayment of the Obligations.

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

(c) If a Lender or Participant is entitled to claim an exemption or reduction from United States withholding tax, such Lender or Participant agrees with and in favor of

Agent, to deliver to Agent (or, in the case of a Participant, to the Lender granting the participation only) one of the following before receiving its first payment under this Agreement:

(i) if such Lender or Participant is entitled to claim an exemption from United States withholding tax pursuant to the portfolio interest exception, (A) a statement of the Lender or Participant, signed under penalty of perjury, that it is not a (I) a "bank" as described in Section 881(c)(3)(A) of the IRC, (II) a 10% shareholder of Borrower (within the meaning of Section 871(h)(3)(B) of the IRC), or (III) a controlled foreign corporation related to Borrower within the meaning of Section 864(d)(4) of the IRC, and (B) a properly completed and executed IRS Form W-8BEN, W-8BEN-E or Form W-8IMY (with proper attachments);

(ii) if such Lender or Participant is entitled to claim an exemption from, or a reduction of, withholding tax under a United States tax treaty, a properly completed and executed copy of IRS Form W-8BEN or W-8BEN-E, as applicable;

(iii) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because it is effectively connected with a United States trade or business of such Lender, a properly completed and executed copy of IRS Form W-8ECI;

(iv) if such Lender or Participant is entitled to claim that interest paid under this Agreement is exempt from United States withholding tax because such Lender or Participant serves as an intermediary, a properly completed and executed copy of IRS Form W-8IMY (with proper attachments); or

(v) a properly completed and executed copy of any other form or forms, including IRS Form W-9, as may be required under the IRC or other laws of the United States as a condition to exemption from, or reduction of, United States withholding or backup withholding tax.

Each Lender or Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent (or, in the case of a Participant, the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(d) If a Lender or Participant claims an exemption from withholding tax in a jurisdiction other than the United States, such Lender or such Participant agrees with and in favor of Agent, to deliver to Agent (or, in the case of a Participant, the Lender granting the participation only) any such form or forms, as may be required under the laws of such jurisdiction as a condition to exemption from, or reduction of, foreign withholding or backup withholding tax before receiving its first payment under this Agreement, but only if such Lender or such Participant is legally able to deliver such forms and the completion, execution and submission of such forms would not subject such Lender or Participant (or its respective Affiliates) to any material unreimbursed cost or expense or would materially prejudice the legal or commercial position of such Lender or Participant (in each case as determined in the Lender's or Participant's reasonable judgment), provided, however, that nothing in this Section 16(d) shall require a Lender or Participant to disclose any information that it deems to be confidential

(including without limitation, its tax returns). Each Lender and each Participant shall provide new forms (or successor forms) upon the expiration or obsolescence of any previously delivered forms and promptly notify Agent (or, in the case of a Participant, the Lender granting the participation only) of any change in circumstances which would modify or render invalid any claimed exemption or reduction.

(e) If a Lender or Participant claims exemption from, or reduction of, withholding tax and such Lender or Participant sells, assigns, grants a participation in, or otherwise transfers all or part of the Obligations of Borrower to such Lender or Participant, such Lender or Participant agrees to notify Agent (or, in the case of a sale of a participation interest, the Lender granting the participation only) of the percentage amount in which it is no longer the beneficial owner of Obligations of Borrower to such Lender or Participant. To the extent of such percentage amount, Agent will treat such Lender's or such Participant's documentation provided pursuant to Section 16(c) or 16(d) as no longer valid. With respect to such percentage amount, such Participant or Assignee may provide new documentation, pursuant to Section 16(c) or 16(d), if applicable. Borrower agrees that each Participant shall be entitled to the benefits of this Section 16 with respect to its participation in any portion of the Commitments and the Obligations so long as such Participant complies with the obligations set forth in this Section 16 with respect thereto.

(f) If a Lender or a Participant is entitled to a reduction in the applicable withholding tax, Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant an amount equivalent to the applicable withholding tax after taking into account such reduction. If the forms or other documentation required by Section 16(c) or 16(d) are not delivered to Agent (or, in the case of a Participant, to the Lender granting the participation), then Agent (or, in the case of a Participant, the Lender granting the participation) may withhold from any interest payment to such Lender or such Participant not providing such forms or other documentation an amount equivalent to the applicable withholding tax.

(g) If the IRS or any other Governmental Authority of the United States or other jurisdiction asserts a claim that Agent (or, in the case of a Participant, the Lender granting the participation) did not properly withhold tax from amounts paid to or for the account of any Lender or any Participant due to a failure on the part of the Lender or any Participant (because the appropriate form was not delivered, was not properly executed, or because such Lender failed to notify Agent (or such Participant failed to notify the Lender granting the participation) of a change in circumstances which rendered the exemption from, or reduction of, withholding tax ineffective, or for any other reason) such Lender shall indemnify and hold Agent harmless (or, in the case of a Participant, such Participant shall indemnify and hold the Lender granting the participation harmless) for all amounts paid, directly or indirectly, by Agent (or, in the case of a Participant, the Lender granting the participation), as tax or otherwise, including penalties and interest, and including any taxes imposed by any jurisdiction on the amounts payable to Agent (or, in the case of a Participant, the Lender granting the participation only) under this Section 16, together with all costs and expenses (including attorneys fees and expenses). The obligation of the Lenders and the Participants under this subsection shall survive the payment of all Obligations and the resignation or replacement of Agent.

(h) If Agent or a Lender determines, in its sole discretion, that it has received a refund of any Taxes as to which it has been indemnified by Borrower or with respect to which Borrower has paid additional amounts pursuant to this Section 16, so long as no Default or Event of Default has occurred and is continuing, it shall pay over such refund to Borrower (but only to the extent of payments made, or additional amounts paid, by Borrower under this Section 16 with respect to Taxes giving rise to such a refund), net of all out-of-pocket expenses of Agent or such Lender and without interest (other than any interest paid by the relevant Governmental Authority with respect to such a refund); provided, that Borrower, upon the request of Agent or such Lender, agrees to repay the amount paid over to Borrower (plus any penalties, interest or other charges, imposed by the relevant Governmental Authority, other than such penalties, interest or other charges imposed as a result of the willful misconduct or gross negligence of Agent hereunder) to Agent or such Lender in the event Agent or such Lender is required to repay such refund to such Governmental Authority. Notwithstanding anything in this Agreement to the contrary, this Section 16 shall not be construed to require Agent or any Lender to make available its tax returns (or any other information which it deems confidential) to Borrower or any other Person.

17. GENERAL PROVISIONS.

17.1. Effectiveness.

This Agreement shall be binding and deemed effective when executed by Borrower, Agent, and each Lender whose signature is provided for on the signature pages hereof. This Agreement shall be deemed to be delivered in the State of Illinois.

17.2. Section Headings.

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

17.3. Interpretation.

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

17.4. Severability of Provisions.

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

17.5. Bank Product Providers.

Each Bank Product Provider shall be deemed a third party beneficiary hereof and of the provisions of the other Loan Documents for purposes of any reference in a Loan Document to the parties for whom Agent is acting. Agent hereby agrees to act as agent for such

Bank Product Providers and, by virtue of entering into a Bank Product Agreement, the applicable Bank Product Provider shall be automatically deemed to have appointed Agent as its agent and to have accepted the benefits of the Loan Documents; it being understood and agreed that the rights and benefits of each Bank Product Provider under the Loan Documents consist exclusively of such Bank Product Provider's being a beneficiary of the Liens and security interests (and, if applicable, guarantees) granted to Agent and the right to share in payments and collections out of the Collateral as more fully set forth herein. In addition, each Bank Product Provider, by virtue of entering into a Bank Product Agreement, shall be automatically deemed to have agreed that Agent shall have the right, but shall have no obligation, to establish, maintain, relax, or release reserves in respect of the Bank Product Obligations and that if reserves are established there is no obligation on the part of Agent to determine or insure whether the amount of any such reserve is appropriate or not. In connection with any such distribution of payments or proceeds of Collateral, Agent shall be entitled to assume no amounts are due or owing to any Bank Product Provider unless such Bank Product Provider has provided a written certification (setting forth a reasonably detailed calculation) to Agent as to the amounts that are due and owing to it and such written certification is received by Agent a reasonable period of time prior to the making of such distribution. Agent shall have no obligation to calculate the amount due and payable with respect to any Bank Products, but may rely upon the written certification of the amount due and payable from the relevant Bank Product Provider. In the absence of an updated certification, Agent shall be entitled to assume that the amount due and payable to the relevant Bank Product Provider is the amount last certified to Agent by such Bank Product Provider as being due and payable (less any distributions made to such Bank Product Provider on account thereof). Borrower may obtain Bank Products from any Bank Product Provider, although Borrower is not required to do so. Borrower acknowledges and agrees that no Bank Product Provider has committed to provide any Bank Products and that the providing of Bank Products by any Bank Product Provider is in the sole and absolute discretion of such Bank Product Provider. Notwithstanding anything to the contrary in this Agreement or any other Loan Document, no provider or holder of any Bank Product shall have any voting or approval rights hereunder (or be deemed a Lender) solely by virtue of its status as the provider or holder of such agreements or products or the Obligations owing thereunder, nor shall the consent of any such provider or holder be required (other than in their capacities as Lenders, to the extent applicable) for any matter hereunder or under any of the other Loan Documents, including as to any matter relating to the Collateral or the release of Collateral or Guarantors.

17.6. **Debtor-Creditor Relationship**.

The relationship between the Lenders and Agent, on the one hand, and the Loan Parties, on the other hand, is solely that of creditor and debtor. No member of the Lender Group has (or shall be deemed to have) any fiduciary relationship or duty to any Loan Party arising out of or in connection with the Loan Documents or the transactions contemplated thereby, and there is no agency or joint venture relationship between the members of the Lender Group, on the one hand, and the Loan Parties, on the other hand, by virtue of any Loan Document or any transaction contemplated therein.

17.7. **Counterparts; Electronic Execution**.

This Agreement may be executed in any number of counterparts and by different parties on separate counterparts, each of which, when executed and delivered, shall be deemed to

be an original, and all of which, when taken together, shall constitute but one and the same Agreement. Delivery of an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission shall be equally as effective as delivery of an original executed counterpart of this Agreement. Any party delivering an executed counterpart of this Agreement by telefacsimile or other electronic method of transmission also shall deliver an original executed counterpart of this Agreement but the failure to deliver an original executed counterpart shall not affect the validity, enforceability, and binding effect of this Agreement. The foregoing shall apply to each other Loan Document *mutatis mutandis*.

17.8. **Revival and Reinstatement of Obligations**.

If the incurrence or payment of the Obligations by Borrower or Guarantor or the transfer to the Lender Group of any property should for any reason subsequently be asserted, or declared, to be void or voidable under any state or federal law relating to creditors' rights, including provisions of the Bankruptcy Code relating to fraudulent conveyances, preferences, or other voidable or recoverable payments of money or transfers of property (each, a "Voidable Transfer"), and if the Lender Group is required to repay or restore, in whole or in part, any such Voidable Transfer, or elects to do so upon the reasonable advice of its counsel, then, as to any such Voidable Transfer, or the amount thereof that the Lender Group is required or elects to repay or restore, and as to all reasonable costs, expenses, and attorneys fees of the Lender Group related thereto, the liability of Borrower or Guarantor automatically shall be revived, reinstated, and restored and shall exist as though such Voidable Transfer had never been made.

17.9. **Confidentiality**.

(a) Agent and Lenders each individually (and not jointly or jointly and severally) agree that material, non-public information regarding Borrower and its Subsidiaries, their operations, assets, and existing and contemplated business plans ("Confidential Information") shall be treated by Agent and the Lenders in a confidential manner, and shall not be disclosed by Agent and the Lenders to Persons who are not parties to this Agreement, except: (i) to attorneys for and other advisors, accountants, auditors, and consultants to any member of the Lender Group and to employees, directors and officers of any member of the Lender Group (the Persons in this clause (i), "Lender Group Representatives") on a "need to know" basis in connection with this Agreement and the transactions contemplated hereby and on a confidential basis, (ii) to Subsidiaries and Affiliates of any member of the Lender Group (including the Bank Product Providers), provided that any such Subsidiary or Affiliate shall have agreed to receive such information hereunder subject to the terms of this Section 17.9, (iii) as may be required by regulatory authorities so long as such authorities are informed of the confidential nature of such information, (iv) as may be required by statute, decision, or judicial or administrative order, rule, or regulation, provided that (x) prior to any disclosure under this clause (iv), the disclosing party agrees to provide Borrower with prior notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior notice to Borrower pursuant to the terms of the applicable statute, decision, or judicial or administrative order, rule, or regulation and (y) any disclosure under this clause (iv) shall be limited to the portion of the Confidential Information as may be required by such statute, decision, or judicial or administrative order, rule, or regulation, (v) as may be agreed to in advance in writing by Borrower, (vi) as requested or required by any Governmental Authority pursuant to any subpoena or other legal process, provided, that, (x) prior to any disclosure under this clause (vi)

the disclosing party agrees to provide Borrower with prior written notice thereof, to the extent that it is practicable to do so and to the extent that the disclosing party is permitted to provide such prior written notice to Borrower pursuant to the terms of the subpoena or other legal process and (y) any disclosure under this clause (vi) shall be limited to the portion of the Confidential Information as may be required by such Governmental Authority pursuant to such subpoena or other legal process, (vii) as to any such information that is or becomes generally available to the public (other than as a result of prohibited disclosure by Agent or the Lenders or the Lender Group Representatives), (viii) in connection with any assignment, participation or pledge of any Lender's interest under this Agreement, provided that prior to receipt of Confidential Information any such assignee, participant, or pledgee shall have agreed in writing to receive such Confidential Information hereunder subject to the terms of this Section, (ix) in connection with any litigation or other adversary proceeding involving parties hereto which such litigation or adversary proceeding involves claims related to the rights or duties of such parties under this Agreement or the other Loan Documents; provided, that, prior to any disclosure to any Person (other than any Loan Party, Agent, any Lender, any of their respective Affiliates, or their respective counsel) under this clause (ix) with respect to litigation involving any Person (other than Borrower, Agent, any Lender, any of their respective Affiliates, or their respective counsel), the disclosing party agrees to provide Borrower with prior written notice thereof, and (x) in connection with, and to the extent reasonably necessary for, the exercise of any secured creditor remedy under this Agreement or under any other Loan Document.

(b) Anything in this Agreement to the contrary notwithstanding, each Lender may (i) provide customary information concerning the terms and conditions of this Agreement and the other Loan Documents to loan syndication and pricing reporting services, and (ii) use the name, logos, and other insignia of Borrower and the Loan Parties and the Total Commitments provided hereunder in any "tombstone" or comparable advertising, on its website or in other marketing materials.

17.10. **Lender Group Expenses**.

Borrower agrees to pay any and all Lender Group Expenses on the earlier of (a) the first day of the month or (b) the date on which demand therefor is made by Agent and agrees that its obligations contained in this Section 17.10 shall survive payment or satisfaction in full of all other Obligations.

17.11. **Survival**.

All representations and warranties made by the Loan Parties in the Loan Documents and in the certificates or other instruments delivered in connection with or pursuant to this Agreement or any other Loan Document shall be considered to have been relied upon by the other parties hereto and shall survive the execution and delivery of the Loan Documents and the making of any loans and issuance of any Letters of Credit, regardless of any investigation made by any such other party or on its behalf and notwithstanding that Agent, the Issuing Lender, or any Lender may have had notice or knowledge of any Default or Event of Default or incorrect representation or warranty at the time any credit is extended hereunder, and shall continue in full force and effect as long as the principal of or any accrued interest on any loan or any fee or any other amount payable under this Agreement is outstanding and unpaid or any Letter of Credit is outstanding and so long as the Commitments have not expired or terminated.

17.12. **Patriot Act**.

Each Lender that is subject to the requirements of the Patriot Act hereby notifies Borrower that pursuant to the requirements of the Act, it is required to obtain, verify and record information that identifies Borrower, which information includes the name and address of Borrower and other information that will allow such Lender to identify Borrower in accordance with the Patriot Act.

17.13. **Integration**.

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

17.14. **Term Debt Intercreditor Agreement**.

Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Agent in favor of the Lender Group and the Bank Product Providers pursuant to this Agreement and the other Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Term Debt Intercreditor Agreement, (b) in the event of any conflict between the terms and provisions of this Agreement or any other Loan Document, on the one hand, and the terms and provisions of the Term Debt Intercreditor Agreement, on the other hand, the terms and provisions of the Term Debt Intercreditor Agreement shall control and (c) each Lender authorizes the Agent to execute the Term Debt Intercreditor Agreement on behalf of such Lender, and each Lender agrees to be bound by the terms thereof.

17.15. **Subordinated Term Debt Intercreditor Agreement**.

Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (a) the Liens granted to the Agent in favor of the Lender Group and the Bank Product Providers pursuant to this Agreement and the other Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Subordinated Term Debt Intercreditor Agreement, (b) in the event of any conflict between the terms and provisions of this Agreement or any other Loan Document, on the one hand, and the terms and provisions of the Subordinated Term Debt Intercreditor Agreement, on the other hand, the terms and provisions of the Subordinated Term Debt Intercreditor Agreement shall control and (c) each Lender authorizes the Agent to execute the Subordinated Term Debt Intercreditor Agreement on behalf of such Lender, and each Lender agrees to be bound by the terms thereof.

[Signature pages to follow.]

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

BOOMERANG TUBE, LLC,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

WELLS FARGO CAPITAL FINANCE, LLC,
a Delaware limited liability company, as Agent and as a Lender

By: _____
Name: _____
Title: _____

BANK OF AMERICA, N.A.,
as a Lender

By: _____
Name: _____
Title: _____

Schedule C-1

Commitments

Lender	Revolver Commitment	Total Commitment
Wells Fargo Capital Finance, LLC	$50,000,000.00	$50,000,000.00
Bank of America, N.A.	$25,000,000.00	$25,000,000.00
Total	$75,000,000.00	$75,000,000.00

Schedule 1.1

As used in the Agreement, the following terms shall have the following definitions:

"ABL DIP Credit Agreement" means that certain Debtor-in-Possession Credit Agreement dated as of June 11, 2015, by and among Borrower, the lenders identified on the signature pages thereof and Agent

"ABL DIP Indebtedness" means the "Obligations" as defined in the ABL DIP Credit Agreement.

"ABL Priority Collateral" means the "Working Capital Priority Collateral" (as such term is defined in the Term Debt Intercreditor Agreement).

"Account" means an account (as that term is defined in the Code).

"Account Debtor" means any Person who is obligated on an Account, chattel paper, or a general intangible.

"Accounting Changes" means changes in accounting principles required by the promulgation of any rule, regulation, pronouncement or opinion by the Financial Accounting Standards Board of the American Institute of Certified Public Accountants (or successor thereto or any agency with similar functions).

"Acquisition" means (a) the purchase or other acquisition by a Person or its Subsidiaries of all or substantially all of the assets of (or any division or business line of) any other Person, or (b) the purchase or other acquisition (whether by means of a merger, consolidation, or otherwise) by a Person or its Subsidiaries of all or substantially all of the Stock of any other Person.

"Additional Availability Amount" means $5,000,000; provided, that the Additional Availability Amount shall be automatically and permanently reduced by an amount equal to $[_____] on the first day of each calendar month (commencing on [_____], 2015) until the Additional Availability Amount has been permanently reduced to an amount equal to zero on January 31, 2016).

"Additional Documents" has the meaning specified therefor in Section 5.12 of the Agreement.

"Advances" has the meaning specified therefor in Section 2.1(a) of the Agreement.

"Affected Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the

power to direct the management and policies of a Person, whether through the ownership of Stock, by contract, or otherwise; provided, however, that, for purposes of the definition of Eligible Accounts and Section 6.12 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Agent" has the meaning specified therefor in the preamble to the Agreement.

"Agent-Related Persons" means Agent, together with its Affiliates, officers, directors, employees, attorneys, and agents.

"Agent's Account" means the Deposit Account of Agent identified on Schedule A-1.

"Agent's Liens" means the Liens granted by Borrower or its Subsidiaries to Agent under the Loan Documents.

"Agreement" means the Credit Agreement to which this Schedule 1.1 is attached.

"APD" Appalachian Pipe Distributors, LLC, a North Carolina limited liability company.

"APD Distributorship Agreement" means that certain Distributorship Agreement dated as of June 17, 2013 between Borrower and APD.

"Applicable Unused Revolver Fee" means a rate equal to 0.50% per annum; provided, that, if as of any date of determination, the average Daily Balance of the Revolver Usage during the immediately preceding month is more than 50% of the Maximum Revolver Amount, the Applicable Unused Revolver Fee means 0.375% per annum.

"Application Event" means the occurrence and continuance of (a) a failure by Borrower to repay all of the Obligations in full on the Maturity Date, or (b) an Event of Default and the election by Agent or the Required Lenders to require that payments and proceeds of Collateral be applied pursuant to Section 2.4(b)(ii) of the Agreement.

"Assignee" has the meaning specified therefor in Section 13.1(a) of the Agreement.

"Assignment and Acceptance" means an Assignment and Acceptance Agreement substantially in the form of Exhibit A-1.

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

"Availability" means, as of any date of determination, the amount that Borrower is entitled to borrow as Advances under Section 2.1 of the Agreement (after giving effect to all then outstanding Advances and Letters of Credit (other than Bank Product Obligations).

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

"Bank Product Agreements" means those agreements entered into from time to time by Borrower or its Subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

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

"Bank Product Obligations" means (a) all obligations, liabilities, reimbursement obligations, fees, or expenses owing by Borrower or its Subsidiaries to any Bank Product Provider pursuant to or evidenced by a Bank Product Agreement and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, (b) all Hedge Obligations, and (c) all amounts that Agent or any Lender is obligated to pay to a Bank Product Provider as a result of Agent or such Lender purchasing participations from, or executing guarantees or indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to Borrower or its Subsidiaries; provided, however, in order for any item described in clauses (a) (b), or (c) above, as applicable, to constitute "Bank Product Obligations", (i) if the applicable Bank Product Provider is Wells Fargo or its Affiliates, then, if requested by Agent, Agent shall have received a Bank Product Provider Letter Agreement within 10 days after the date of such request, or (ii) if the applicable Bank Product Provider is any other Person, the applicable Bank Product must have been provided on or after October 5, 2011 and Agent shall have received a Bank Product Provider Letter Agreement within 10 days after the date of the provision of the applicable Bank Product to Borrower or its Subsidiaries.

"Bank Product Provider" means any Lender or any of its Affiliates; provided, however, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Bank Product Provider with respect to a Bank Product unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Bank Product within 10 days after the provision of such Bank Product to Borrower or its Subsidiaries; provided, further, however, that if, at any time, a Lender ceases to be a Lender under the Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Bank Product Providers and the obligations with respect to Bank Products provided by such former Lender or any of its Affiliates shall no longer constitute Bank Product Obligations.

"Bank Product Provider Letter Agreement" means a letter agreement in substantially the form attached hereto as Exhibit B-2, in form and substance satisfactory to Agent, duly executed by the applicable Bank Product Provider, Borrower, and Agent.

"Bank Product Reserve Amount" means, as of any date of determination, the Dollar amount of reserves that Agent has reasonably determined it is necessary or appropriate to establish (based upon the Bank Product Providers' reasonable determination of their credit exposure to Borrower and its Subsidiaries in respect of Bank Product Obligations) in respect of Bank Products then provided or outstanding.

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

"Base Rate" means the greatest of (a) the Federal Funds Rate plus ½%, (b) the LIBOR Rate (which rate shall be calculated based upon an Interest Period of 3 months and shall be determined on a daily basis), plus 1 percentage point, and (c) the rate of interest announced, from time to time, within Wells Fargo at its principal office in San Francisco as its "prime rate", with the understanding that the "prime rate" is one of Wells Fargo's base rates (not necessarily the lowest of such rates) and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto and is evidenced by the recording thereof after its announcement in such internal publications as Wells Fargo may designate.

"Base Rate Loan" means each portion of the Advances that bears interest at a rate determined by reference to the Base Rate.

"Base Rate Margin" means, as of any date of determination (with respect to any portion of the outstanding Advances on such date that is a Base Rate Loan), the applicable margin set forth in the following table that corresponds to average daily Excess Availability for the most recently ended month (the "Monthly Average Excess Availability Amount"):

Level	Monthly Average Excess Availability Amount	Base Rate Margin for Advances
I	≤ $15,000,000	0.50 percentage points
II	> $15,000,000 but < $25,000,000	0.25 percentage points
III	≥ $25,000,000	0.00 percentage points

The Base Rate Margin shall be based upon the most recent Monthly Average Excess Availability Amount, which will be calculated as of the end of each fiscal month. If Borrower fails to provide the information necessary to calculate the Monthly Average Excess Availability Amount, the Base Rate Margin shall be set at the margin in the row styled "Level I" until the date on which such information is delivered (on which date (but not retroactively), without constituting a waiver of any Default or Event of Default occasioned by the failure to timely deliver such information, the Base Rate Margin shall be set at the margin based upon the calculations disclosed by such information).

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

"Board of Directors" means the board of directors (or comparable managers) of Borrower or any committee thereof duly authorized to act on behalf of the board of directors (or comparable managers).

"Borrower" has the meaning specified therefor in the preamble to the Agreement.

"Borrowing" means a borrowing consisting of Advances made on the same day by the Lenders (or Agent on behalf thereof), or by Swing Lender in the case of a Swing Loan, or by Agent in the case of a Protective Advance.

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

(a) the product of (A) 85%, less the Dilution Percentage in excess of 5%, times (B) the amount of Eligible Accounts, *plus*

(b) *the lower of*

(i) the sum of (A) 70% of the value (calculated at the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of Eligible Inventory (other than Eligible In-Transit Inventory) *plus* (B) 60% of the value (calculated at the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of Eligible In-Transit Inventory, and

(ii) 85% *times* the most recently determined Net Liquidation Percentage *times* the value (calculated at the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of Eligible Inventory, *plus*

(c) the Additional Availability Amount, *minus*

(d) the aggregate amount of reserves, if any, established by Agent under Section 2.1(c) of the Agreement (including any Rent Reserve).

Notwithstanding the foregoing, the borrowing availability attributable to Eligible Inventory consisting of (i) Eligible Purchased Inventory shall not exceed $4,000,000 in the aggregate at any time, (ii) Eligible Processor/Warehouse Inventory shall not exceed $5,000,000 in the aggregate at any time and (iii) until receipt by Agent of an Inventory appraisal (in form and substance satisfactory to Agent) after the Closing Date, the borrowing availability under clause (b) above shall not exceed $34,000,000 at any time.

"Borrowing Base Certificate" means a certificate in the form of Exhibit B-1.

"Borrowing Base Excess" has the meaning set forth in Section 2.4(e)(i).

"Business Day" means any day that is not a Saturday, Sunday, or other day on which banks are authorized or required to close in the state of Illinois, except that, if a determination of a Business Day shall relate to a LIBOR Rate Loan, the term "Business Day" also shall exclude any day on which banks are closed for dealings in Dollar deposits in the London interbank market.

"Capital Expenditures" means, with respect to any Person for any period, the aggregate of all expenditures by such Person and its Subsidiaries during such period that are capital expenditures as determined in accordance with GAAP, whether such expenditures are paid in cash or financed, provided, however, that Capital Expenditures of any Person shall not include (i) expenditures made with Net Cash Proceeds reinvested pursuant to the provision in Section 2.4(e)(ii) or the provision in Section 8.4(b)(i)(y) of the Term Debt Loan Agreement or (ii) interest capitalized during such period.

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

"Capital Lease" means a lease that is required to be capitalized for financial reporting purposes in accordance with GAAP; provided, that, notwithstanding anything to the contrary contained herein, for purposes of this Agreement, in the case of any Accounting Change that becomes effective after the date of this Agreement that would require any leases that would have been treated as operating leases in accordance with GAAP in effect immediately before the date of this Agreement to be classified and accounted as capital leases, such change or effect thereof shall be disregarded and eliminated for purposes of the operation of the terms and covenants (and the related calculations thereunder) in this Agreement unless Borrower and Agent shall otherwise mutually agree in writing.

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

maturities of six months or less from the date of acquisition backed by standby letters of credit issued by any commercial bank satisfying the criteria described in clause (d) above, and (h) Investments in money market funds substantially all of whose assets are invested in the types of assets described in clauses (a) through (g) above.

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

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

"Change of Control" means that (a) Permitted Holders fail to own and control, directly or indirectly, 60.0%, or more, of the capital Stock of Borrower having the right to vote for the election of members of the Board of Directors, (b) Borrower fails to own and control, directly or indirectly, 100% of the capital Stock of each other Loan Party, (c) a "Change of Control" as defined in the Term Debt Loan Agreement has occurred, or (d) a "Change of Control" as defined in the Subordinated Term Debt Credit Agreement has occurred.

"Closing Date" means the date on which this Agreement becomes effective in accordance with Section 3.1 and the initial extension of credit hereunder occurs.

"Code" means the Illinois Uniform Commercial Code, as in effect from time to time.

"Collateral" means all assets and interests in assets and proceeds thereof now owned or hereafter acquired by Borrower or its Subsidiaries in or upon which a Lien is granted by such Person in favor of Agent or the Lenders under any of the Loan Documents.

"Collateral Access Agreement" means a landlord waiver, bailee letter, or acknowledgement agreement of any lessor, warehouseman, processor, consignee, or other Person in possession of, having a Lien upon, or having rights or interests in Borrower's or its Subsidiaries' books and records, Equipment, or Inventory, in each case, in form and substance reasonably satisfactory to Agent.

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

"Commitment" means, with respect to each Lender, its Revolver Commitment or its Total Commitment, as the context requires, and, with respect to all Lenders, their Revolver Commitments or their Total Commitments, as the context requires, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Compliance Certificate" means a certificate substantially in the form of Exhibit C-1 delivered by the chief financial officer or other financial officer of Borrower to Agent.

"Confidential Information" has the meaning specified therefor in Section 17.9(a) of the Agreement.

"Confirmation Date" means the date upon which the Bankruptcy Court enters the Confirmation Order on the docket of the Bankruptcy Case within the meaning of Sections 5003 and 9021 of the Bankruptcy Code.

"Confirmation Hearing" means the hearing(s) before the Bankruptcy Court under Section 1128 of the Bankruptcy Code at which the Debtors (as defined in the Plan of Reorganization) seek entry of the Confirmation Order.

"Confirmation Order" means the order confirming the Plan of Reorganization, entered at or in connection with the Confirmation Hearing, which order shall be in form and substance satisfactory to Required Lenders.

"Consolidated Total Assets" means as of any date of determination, the total assets in each case of the Loan Parties at the end of the most recently ended fiscal quarter of the Borrower for which Agent has received financial statements required to be delivered pursuant to Schedule 5.1, determined on a consolidated basis in accordance with GAAP (and, in the case of any determination relating to any incurrence of Indebtedness or any Investment, on a pro forma basis including any property or assets being acquired in connection therewith).

"Control" means 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 ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement" means a control agreement, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrower or one of its Subsidiaries, Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Account Agreement" has the meaning specified therefor in the Security Agreement.

"Controlled Investment Affiliates" means, as to any Permitted Holder, (a) the controlling member, general partner, manager or investment manager and controlled affiliates of such Permitted Holder, (b) any fund or investment vehicle with the same general partner, manager or investment manager as such Permitted Holder or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager, and (c) any other Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Permitted Holder, the general partner of such Person, investment manager of such Person or controlled affiliate of such Person, general partner or investment manager.

"Covenant Testing Period" means a period (a) commencing on the last day of the fiscal month of Borrower most recently ended on or prior to an Excess Availability Trigger Date and for which Agent has received financial statements required to be delivered pursuant to Schedule 5.1 (but in no event shall a Covenant Testing Period commence prior to January 31, 2016) and (b) ending on the first day after such Excess Availability Trigger Date that Excess Availability is equal to or greater than the "Applicable Threshold" (as defined below) for 90 consecutive days. The "Applicable Threshold" means (i) at all times during the period commencing on January 31, 2016 through March 31, 2016, $3,000,000, (ii) at all times during the period commencing on April 1, 2016 through June 30, 2016, 10% of the Borrowing Base and (iii) at all times on and after July 1, 2016, the greater of 10% of the Maximum Revolver Amount and $7,500,000.

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

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

"Defaulting Lender" means any Lender that (a) has failed to fund any amounts required to be funded by it under the Agreement on the date that it is required to do so under the Agreement (including the failure to make available to Agent amounts required pursuant to a Settlement or to make a required payment in connection with a Letter of Credit Disbursement), (b) notified the Borrower, Agent, or any Lender in writing that it does not intend to comply with all or any portion of its funding obligations under the Agreement, (c) has made a public statement to the effect that it does not intend to comply with its funding obligations under the Agreement or under other agreements generally (as reasonably determined by Agent) under which it has committed to extend credit, (d) failed, within 1 Business Day after written request by Agent, to confirm that it will comply with the terms of the Agreement relating to its obligations to fund any amounts required to be funded by it under the Agreement, (e) otherwise failed to pay over to Agent or any other Lender any other amount required to be paid by it under the Agreement on the date that it is required to do so under the Agreement, or (f) (i) becomes or is insolvent or has a parent company that has become or is insolvent or (ii) becomes the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian or appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment or has a parent company that has become the subject of a bankruptcy or insolvency proceeding, or has had a receiver, conservator, trustee, or custodian appointed for it, or has taken any action in furtherance of, or indicating its consent to, approval of or acquiescence in any such proceeding or appointment.

"Defaulting Lender Rate" means (a) for the first 3 days from and after the date the relevant payment is due, the Base Rate, and (b) thereafter, the interest rate then applicable to Advances that are Base Rate Loans (inclusive of the Base Rate Margin applicable thereto).

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

"Designated Account" means the Deposit Account of Borrower identified on Schedule D-1.

"Designated Account Bank" has the meaning specified therefor in Schedule D-1.

"Dilution Percentage" means, as of any date of determination, a percentage, based upon the experience of the immediately prior 90 consecutive days, that is the result of dividing the Dollar amount of (a) bad debt write-downs, discounts, advertising allowances, credits, or other dilutive items with respect to Loan Parties' Accounts during such period, by (b) Loan Parties' billings with respect to Accounts during such period.

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

"Earn-Outs" shall mean unsecured liabilities of a Loan Party arising under an agreement to make any deferred payment as a part of the aggregate consideration paid in connection with a Permitted Acquisition, including performance bonuses or consulting payments in any related services, employment or similar agreement, in an amount that is subject to or contingent upon the revenues, income, cash flow or profits (or the like) of the target of such Permitted Acquisition.

"EBITDA[4]" means, with respect to any fiscal period, Borrower's consolidated net earnings (or loss), minus (x) (i) extraordinary gains (other than cash extraordinary gains which Agent, in its sole discretion and upon notice to Borrower, has not required Borrower to deduct from EBITDA) and (ii) interest income, plus (y) (i) non-cash losses, (ii) interest expense, (iii) provision for income taxes, (iv) depreciation and amortization for such period (v) costs and expenses incurred in connection with the Bankruptcy Case and the Transactions in an aggregate amount not to exceed $[_____] during the term of this Agreement and (vi) business organization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, contract termination costs and costs to consolidate facilities and relocate employees) in an amount not to exceed (A) $[_____] in any four (4) consecutive quarter period and (B) $[_____] during the term of this Agreement, in each case, determined on a consolidated basis in accordance with GAAP.

"Effective Date" has the meaning specified therefor in the Plan of Reorganization.

"Eligible Accounts" means those Accounts created by a Loan Party in the ordinary course of its business, that arise out of such Loan Party's sale of goods or rendition of services, that comply with each of the representations and warranties respecting Eligible Accounts made in the Loan Documents, and that are not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit performed by Agent from time to time after the Closing Date. In determining the amount to be included, Eligible Accounts shall be calculated net of customer deposits and unapplied cash. Eligible Accounts shall not include the following:

(a) Accounts that the Account Debtor has failed to pay within 120 days of original invoice date or 60 days of due date, or Accounts with selling terms of more than 30 days (or 90 days in the case of Encana, provided that if such Accounts have

[4] NTD: Amounts being added back to EBITDA under clause (y) of the definition thereof subject to additional diligence by and the satisfaction and final approval of the Lenders.

selling terms of more than 60 days, such Accounts are not unpaid more than 30 days past due date),

(b) Accounts owed by an Account Debtor (or its Affiliates) where 50% or more of all Accounts owed by that Account Debtor (or its Affiliates) are deemed ineligible under clause (a) above,

(c) Accounts with respect to which the Account Debtor is an Affiliate of a Loan Party or an employee or agent of a Loan Party or any Affiliate of a Loan Party,

(d) Accounts arising in a transaction wherein goods are placed on consignment or are sold pursuant to a guaranteed sale, a sale or return, a sale on approval, a bill and hold, or any other terms by reason of which the payment by the Account Debtor may be conditional,

(e) Accounts that are not payable in Dollars,

(f) Accounts with respect to which the Account Debtor either (i) does not maintain its chief executive office in the United States or Canada, or (ii) is not organized under the laws of the United States or Canada or any state or province, as applicable, thereof, or (iii) is the government of any foreign country or sovereign state, or of any state, province, municipality, or other political subdivision thereof, or of any department, agency, public corporation, or other instrumentality thereof, unless (y) the Account is supported by an irrevocable letter of credit reasonably satisfactory to Agent (as to form, substance, and issuer or domestic confirming bank) that has been delivered to Agent and is directly drawable by Agent, or (z) the Account is covered by credit insurance in form, substance, and amount, and by an insurer, reasonably satisfactory to Agent,

(g) Accounts with respect to which the Account Debtor is either (i) the United States or any department, agency, or instrumentality of the United States (exclusive, however, of Accounts with respect to which Borrower has complied, to the reasonable satisfaction of Agent, with the Assignment of Claims Act, 31 USC §3727), or (ii) any state of the United States,

(h) Accounts with respect to which the Account Debtor is a creditor of a Loan Party, has or has asserted a right of setoff, or has disputed its obligation to pay all or any portion of the Account, to the extent of such claim, right of setoff, or dispute,

(i) Accounts with respect to an Account Debtor (other than Bourland & Leverich Supply Co., Premier Pipe, LLC, Colorado Tubulars - Aztec Pipe, Master Tubulars Inc., APD, EOG Resources and Sooner Pipe, LLC) whose total obligations owing to Loan Parties exceed 10% (such percentage, as applied to a particular Account Debtor, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, or Accounts with respect to (i) Bourland & Leverich Supply Co. if the total obligations owing to Loan Parties by Bourland & Leverich Supply Co. exceed 30% (such percentage, as applied to Bourland & Leverich Supply Co., being subject to reduction by Agent in its

Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (ii) Premier Pipe, LLC if the total obligations owing to Loan Parties by Premier Pipe, LLC exceed 20% (such percentage, as applied to Premier Pipe, LLC, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (iii) Colorado Tubulars - Aztec Pipe if the total obligations owing to Loan Parties by Colorado Tubulars - Aztec Pipe exceed 30% (such percentage, as applied to Colorado Tubulars - Aztec Pipe, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (iv) Master Tubulars Inc. if the total obligations owing to Loan Parties by Master Tubulars Inc. exceed 25% (such percentage, as applied to Master Tubulars Inc., being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (v) APD if the total obligations owing to Loan Parties by APD exceed 20% (such percentage, as applied to APD, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (vi) EOG Resources if the total obligations owing to Loan Parties by EOG Resources exceed 25% (such percentage, as applied to EOG Resources, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, (vii) Sooner Pipe, LLC if the total obligations owing to Loan Parties by Sooner Pipe, LLC exceed 25% (such percentage, as applied to Sooner Pipe, LLC, being subject to reduction by Agent in its Permitted Discretion if the creditworthiness of such Account Debtor deteriorates) of all Eligible Accounts, in each case to the extent of the obligations owing by such Account Debtor in excess of such percentage; provided, however, that, in each case, the amount of Eligible Accounts that are excluded because they exceed any of the foregoing percentages shall be determined by Agent based on all of the otherwise Eligible Accounts prior to giving effect to any eliminations based upon any of the foregoing concentration limits,

(j) Accounts with respect to which the Account Debtor is subject to an Insolvency Proceeding, is not Solvent, has gone out of business, or as to which a Loan Party has received notice of an imminent Insolvency Proceeding or a material impairment of the financial condition of such Account Debtor,

(k) Accounts, the collection of which, Agent, in its Permitted Discretion, believes to be doubtful by reason of the Account Debtor's financial condition,

(l) Accounts that are not subject to a valid and perfected first priority Agent's Lien,

(m) Accounts with respect to which (i) the goods giving rise to such Account have not been shipped and billed to the Account Debtor, or (ii) the services giving rise to such Account have not been performed and billed to the Account Debtor,

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

(o) Accounts that represent the right to receive progress payments or other advance billings that are due prior to the completion of performance by the applicable Loan Party of the subject contract for goods or services, or

(p) Accounts owned by a target acquired in connection with a Permitted Acquisition, until the completion of an appraisal and field examination with respect to such target, in each case, reasonably satisfactory to Agent (which appraisal and field examination may be conducted prior to the closing of such Permitted Acquisition).

"Eligible Consigned Inventory" means Inventory of a Loan Party that (a) qualifies as Eligible Inventory except that such Inventory (A) is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location) and (B) such Inventory has been consigned to APD pursuant to the APD Distributorship Agreement and (b) satisfies the following additional criteria: (i) Agent has received a letter agreement with respect to such Inventory executed by such Loan Party and such consignee, in form and substance satisfactory to Agent, (ii) such Loan Party has filed a UCC-1 financing statement against such consignee with respect to such Inventory and such Loan Party has assigned such UCC-1 financing statement to Agent and such Loan Party and consignee have delivered such other documents as reasonably requested by Agent, in form and substance satisfactory to Agent, to evidence that Agent has a valid and perfected first priority Lien on such Inventory, (iii) such Inventory is segregated or otherwise separately identifiable from the goods of the consignee and others, if any, stored on the premises of such consignee, (iv) the value (calculated on the lower of cost or market on a basis consistent with Borrower's historical accounting practices) of such Inventory does not exceed $5,000,000 in the aggregate, and (v) such Inventory is located at one of the follow locations: (i) 70 Maryland Ave., Jersey Shore, PA 17740; (ii) 5257 State Highway 250, Strasburg, OH 44680; (iii) 1300 Heavy Haul Road, Morgantown, WV 26508; (iv) 650 Rail Terminal Drive, DuBois, PA 15801; (v) 60 Dominic Pace Ind. Pkwy., Sayre, PA 18840; or (vi) 137 N. Bauer Road, Wooster, OH 44691.

"Eligible In-Transit Inventory" means Inventory of a Loan Party that (a) qualifies as Eligible Inventory except that such Inventory (A) currently is in transit from a location in the United States to a location set forth on Schedule E-1 and (B) is the subject of a bill of lading or other document of title and (b) satisfies the following additional criteria: (i) a Loan Party has title to such Inventory, (ii) such Inventory is not in transit for more than 45 days, (iii) no default exists under any agreement in effect between the vendor of such Inventory and a Loan Party that would permit such vendor under any applicable law (including the UCC) to divert, reclaim, reroute or stop shipment of such Inventory, and (iv) such Inventory is insured against types of loss, damage, hazards and risks, and in amounts, satisfactory to Agent in its Permitted Discretion.

"Eligible Inventory" means Inventory consisting of first quality finished goods held for sale in the ordinary course of a Loan Party's business, raw materials and work-in-process (provided, that, work-in-process shall only be deemed to be Eligible Inventory hereunder after receipt by Agent of an appraisal with respect to such work-in-process, in form and substance satisfactory to Agent, prepared by AccuVal Associates, Incorporated (so long as AccuVal Associates, Incorporated is then an approved appraiser of Agent) or another appraiser satisfactory to Agent, and only so long as Agent agrees, in its Permitted Discretion, to permit such work-in-process to constitute Eligible Inventory hereunder), in each case that complies with

each of the representations and warranties respecting Eligible Inventory made in the Loan Documents, and that is not excluded as ineligible by virtue of one or more of the excluding criteria set forth below; provided, however, that such criteria may be revised from time to time by Agent in Agent's Permitted Discretion to address the results of any audit or appraisal performed by Agent from time to time after the Closing Date. In determining the amount to be so included, Inventory shall be valued at the lower of cost or market on a basis consistent with Borrower's historical accounting practices. An item of Inventory shall not be included in Eligible Inventory if:

(a) a Loan Party does not have good, valid, and marketable title thereto,

(b) [reserved],

(c) it is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location) (other than Eligible Purchased Inventory, Eligible Consigned Inventory or Eligible Processor/Warehouse Inventory),

(d) it is in-transit to or from a location of a Loan Party (other than (A) in transit from one location set forth on Schedule E 1 to another location set forth on Schedule E-1, (B) Eligible In Transit Inventory or (C) Eligible Purchased Inventory),

(e) it is located on real property leased by a Loan Party or in a contract warehouse, in each case, unless it is subject to a Collateral Access Agreement executed by the lessor or warehouseman, as the case may be, or Agent has established a Rent Reserve under Section 2.1(c) for such location, and unless it is segregated or otherwise separately identifiable from goods of others, if any, stored on the premises,

(f) it is the subject of a bill of lading or other document of title, unless it is Eligible In-Transit Inventory,

(g) it is not subject to a valid and perfected first priority Agent's Lien,

(h) it consists of goods returned or rejected by a Loan Party's customers,

(i) it consists of goods that are obsolete or slow moving, restrictive or custom items, work-in-process (unless Agent has agreed, in its Permitted Discretion, to permit such work-in-process to constitute Eligible Inventory hereunder as provided in the first paragraph hereof), or goods that constitute spare parts, packaging and shipping materials, supplies used or consumed in a Loan Party's business, bill and hold goods not subject to documentation satisfactory to Agent, in excess of $5,000,000 in the aggregate or which have been held for more than 30 days after billing, defective goods, "seconds," or Inventory acquired on consignment,

(j) it is subject to third party trademark, licensing or other proprietary rights, unless Agent is satisfied that such Inventory can be freely sold by Agent on and after the occurrence of an Event of a Default despite such third party rights,

(k) it was acquired in connection with a Permitted Acquisition, until the completion of an appraisal and field examination of such Inventory, in each case, reasonably satisfactory to Agent (which appraisal and field examination may be conducted prior to the closing of such Permitted Acquisition), or

(l) it is Inventory consigned by a Loan Party unless it is Eligible Consigned Inventory.

"Eligible Processor/Warehouse Inventory" means Inventory of a Loan Party that (a) qualifies as Eligible Inventory except that such Inventory (A) is not located at one of the locations in the continental United States set forth on Schedule E-1 (or in-transit from one such location to another such location) and (B) such Inventory is located (i) at the location of a processor who is processing and storing the Inventory for such Loan Party or (ii) at a warehouse facility which is storing the Inventory for such Loan Party and (b) satisfies the following additional criteria: (i) Agent has received a Collateral Access Agreement (with respect to such Inventory located at a warehouse location) or letter agreement (with respect to such Inventory located at a processor location) executed by such Loan Party and such processor or warehouseman, as applicable, in form and substance satisfactory to Agent, (ii) with respect to Inventory located at a processor location, such Loan Party has filed a UCC-1 financing statement against such processor with respect to such Inventory and such Loan Party has assigned such UCC-1 financing statement to Agent and such Loan Party and such processor have delivered such other documents as reasonably requested by Agent, in form and substance satisfactory to Agent, to evidence that Agent has a valid and perfected first priority Lien on such Inventory, (iii) such Inventory is segregated or otherwise separately identifiable from the goods of such processor or warehouseman and others, if any, stored on the premises of such processor or warehouseman, and (iv) such Inventory is located at one of the follow locations: (1) Xxtreme Pipe Services, 7814 Miller Road 3, Houston, TX 77049, (2) Lincoln Manufacturing, 5301 Polk St., Houston, TX 77023 and 777 S. Wooster Avenue Strasburg, OH 44680, (3) Lone Star Hydro & Maintenance, 16026 Miller Road #1 and 7415 Miller Road #2, Houston, TX 77049, (4) K&B Houston, 8500 Miller Rd. #2, Houston, TX 77049 (5) Frontier Tubular Solutions, LLC, 15730 Beaumont Hwy., Houston, TX 77049, (6) Certified Pipe Service Houston, Inc. c/o County Line Industrial Park, 14600 Hatcherville Rd., Baytown, TX 77523, (7) Innovative Distribution Services, LLC, 3800 West Greenwood, Baytown, TX 77523, (8) Panhandle Oilfield Services, 5257 US Hwy. 250, Strasburg, OH 44680, (9) Tuboscope, a Division of National Oilwell Varco, LP – South, 9015 Sheldon Road, Houston, TX 77049 and (10) Cudd Pressure Control, Inc. (d/b/a Patterson Tubular Services), 539 Patterson Rd., Houston, TX 77015.

"Eligible Purchased Inventory" means Inventory that (a) qualifies as Eligible Inventory except that such Inventory (A) currently is in transit from a location of a Loan Party in the United States to the location of a customer of such Loan Party in the United States and (B) such Inventory has been sold to such customer by such Loan Party effective upon delivery at the shipment destination, such Loan Party has title to such Inventory until such delivery, and such Loan Party has not yet issued an invoice to such customer with respect to the sale of such Inventory and (b) satisfies the following additional criteria: (i) once invoiced by the applicable

Loan Party, the Account arising with respect to the sale of such Inventory will qualify as an Eligible Account, (ii) such Inventory is not in transit for more than 14 days.

"Encana" means Encana Oil & Gas (USA) Inc.

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

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

"Environmental Liabilities" means all liabilities, monetary obligations, losses, damages, costs and expenses (including all reasonable fees, disbursements and expenses of counsel, experts, or consultants, and costs of investigation and feasibility studies), fines, penalties, sanctions, and interest incurred as a result of any claim or demand, or Remedial Action required, by any Governmental Authority or any third party, and which relate to any Environmental Action.

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

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

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

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

"Event of Default" has the meaning specified therefor in Section 8 of the Agreement.

"Excess Availability" means, as of any date of determination, the amount equal to Availability *minus* the aggregate amount, if any, of all trade payables of Borrower and its Subsidiaries aged in excess of historical levels with respect thereto (other than tax payments owing to Liberty County which are subject to the Tax Restructuring Agreements [**and trade payable accommodations made to [_____] and [_____] which are subject to the Trade Payable Restructuring Agreements**]; provided, that if Borrower fails to make a payment when due under any Tax Restructuring Agreement or any Trade Payable Restructuring Agreement, or otherwise fails to be in compliance with the terms of any Tax Restructuring Agreement or any Trade Payable Restructuring Agreement and such noncompliance would (a) result in such agreement becoming null and void, (b) result in the acceleration of the obligations described therein or (c) permit the holder of the Funded Indebtedness thereunder to accelerate the maturity of such Funded Indebtedness (whether or not the holder accelerates the maturity of such Funded Indebtedness as a result of such noncompliance), then the amount of such Funded Indebtedness shall be deducted from Availability for purposes of this definition) and all book overdrafts of Borrower and its Subsidiaries in excess of historical practices with respect thereto, in each case as determined by Agent in its Permitted Discretion.

"Excess Availability Trigger Date" means:

(A) with respect to the period commencing on the date on which financial statements for the fiscal month of Borrower ending January 31, 2016 are delivered pursuant to Schedule 5.1 through March 31, 2016, any date Borrower fails to maintain Excess Availability of at least $3,000,000;

(B) with respect to the period commencing on April 1, 2016 through June 30, 2016, any date Borrower fails to maintain Excess Availability of at least 10% of the Borrowing Base as of such date;

(C) at all times on and after July 1, 2016, any date Borrower fails to maintain Excess Availability of at least the greater of (x) 10% of the Maximum Revolver Amount and (y) $7,500,000.

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

"Excluded Taxes" means (i) any income or franchise tax imposed on the net income or net profits of any Lender or any Participant imposed (a) by the United States, (b) by any other jurisdiction (or by any political subdivision or taxing authority thereof) under the laws of which such Lender or such Participant is organized or has its principal office or maintains its applicable lending office, or (c) by any other jurisdiction (or by any political subdivision or taxing authority thereof) as a result of a present or former connection between such Lender or such Participant and such jurisdiction, political subdivision or taxing authority (other than any such connection arising solely from such Lender or such Participant having executed, delivered or performed its obligations or received payment under, or enforced its rights or remedies under, this Agreement or any other Loan Document); (ii) any branch profits taxes imposed by the

United States or any similar tax imposed by any other jurisdiction in which the Borrower is located for tax purposes as of the date of this Agreement, (iii) withholding taxes that would not have been imposed but a Lender's or a Participant's failure to comply with its requirements of Section 16(c) or (d) of the Agreement; (iv) in the case of a Lender other than a Foreign Lender, backup withholding tax imposed under Section 3406 of the IRC (other than as a result of a change in law); (v) United States federal withholding taxes imposed by FATCA; and (vi) any United States federal withholding taxes that would be imposed on amounts payable to a Foreign Lender based upon the applicable withholding rate in effect at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), except that Excluded Taxes shall not include (A) any amount that such Foreign Lender (or its assignor, if any) was previously entitled to receive pursuant to Section 16(a) of the Agreement, if any, with respect to such withholding tax at the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), and (B) additional United States federal withholding taxes that may be imposed after the time such Foreign Lender becomes a party to the Agreement (or designates a new lending office), as a result of a change in law, rule, regulation, order or other decision with respect to any of the foregoing by any Governmental Authority.

"Existing Letters of Credit" means those letters of credit **[_____ issued pursuant to the ABL DIP Credit Agreement and outstanding on the Closing Date, if any**].

"Extraordinary Receipts" means any payments received by Borrower or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds described in Section 2.4(e)(ii) of the Agreement) consisting of (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (b) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, or (ii) received by Borrower or any of its Subsidiaries as reimbursement for any payment previously made to such Person), and (c) any purchase price adjustment (other than a working capital adjustment) received in connection with any purchase agreement.

"FATCA" means Sections 1471 through 1474 of the IRC, as of the date of this Agreement (or any amended or successor provisions that are substantively comparable), any current or future regulations or official interpretations thereof, any agreements entered into pursuant to Section 1471(b) of the IRC, any intergovernmental agreement entered into by the United States in connection with any of the foregoing and any fiscal or regulatory legislation, rules or practices adopted pursuant to any such intergovernmental agreement.

"Fee Letter" means that certain fee letter, dated as of even date with the Agreement, between Borrower and Agent.

"Federal Funds Rate" means, for any period, a fluctuating interest rate per annum equal to, for each day during such period, the weighted average of the rates on overnight Federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers, as published on the next succeeding Business Day by the Federal Reserve Bank of New York, or, if such rate is not so published for any day which is a Business Day, the average of the quotations for such day on such transactions received by Agent from three Federal funds brokers of recognized standing selected by it.

"Fixed Charges" means, with respect to any fiscal period and with respect to Borrower determined on a consolidated basis in accordance with GAAP, the sum, without duplication, of (a) Interest Expense accrued (other than interest paid-in-kind, amortization of financing fees, and other non-cash Interest Expense) during such period, (b) scheduled principal payments in respect of Funded Indebtedness (excluding any scheduled principal payment that is due on the final maturity date of such Funded Indebtedness, to the extent such scheduled principal payment is paid with the proceeds of a refinancing in full of such Funded Indebtedness) that are required to be paid during such period, and (c) all federal, state, and local income taxes accrued during such period, and (d) all Restricted Junior Payments paid (whether in cash or other property, other than common Stock) during such period.

"Fixed Charge Coverage Ratio" means, with respect to Borrower and its Subsidiaries for any period, the ratio of (i) EBITDA for such period *minus* Capital Expenditures made (to the extent not already incurred in a prior period and not financed with the proceeds of Indebtedness (other than Advances) or equity) or incurred during such period, to (ii) Fixed Charges for such period.

"Foreign Lender" means any Lender or Participant that is not a United States person within the meaning of IRC section 7701(a)(30).

"Foreign Subsidiary" means any Subsidiary of Borrower which is organized and existing under the laws of any jurisdiction outside of the United States of America. Any subsidiary of the Borrower which is organized and existing under the laws of Puerto Rico or any other territory of the United States of America shall be a Foreign Subsidiary.

"Foreign Subsidiary Holdco" means any Subsidiary of Borrower that has no assets (other than a de minimis amount) other than equity securities and Indebtedness of one or more Foreign Subsidiaries that are CFCs and cash (including Cash Equivalents) from distributions on such equity securities of such CFCs or payments by such CFCs on such Indebtedness.

"Funded Indebtedness" means Indebtedness for borrowed money (including Purchase Money Indebtedness, Indebtedness under the Tax Restructuring Agreements**[, Indebtedness under the Trade Payable Restructuring Agreements]** and Indebtedness evidenced by a note or bond) but excluding the Advances.

"Funding Date" means the date on which a Borrowing occurs.

"Funding Losses" has the meaning specified therefor in Section 2.12(b)(ii) of the Agreement.

"GAAP" means generally accepted accounting principles as in effect from time to time in the United States, consistently applied; provided, however, that all calculations relative to liabilities shall be made without giving effect to Statement of Financial Accounting Standards No. 159.

"Governing Documents" means, with respect to any Person, the certificate or articles of incorporation, by-laws, or other organizational documents of such Person.

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

"Guarantors" means (a) each Person that is a Subsidiary of Borrower on the Closing Date and (b) each other Person that becomes a guarantor after the Closing Date pursuant to Section 5.11 of this Agreement, and "Guarantor" means any one of them.

"Guaranty" means that certain guaranty, dated as of the Closing Date, executed and delivered by each extant Guarantor in favor of Agent, for the benefit of the Lender Group and the Bank Product Providers, in form and substance reasonably satisfactory to Agent.

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

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

"Hedge Obligations" means any and all obligations or liabilities, whether absolute or contingent, due or to become due, now existing or hereafter arising, of Borrower or its Subsidiaries arising under, owing pursuant to, or existing in respect of Hedge Agreements entered into with one or more of the Hedge Providers.

"Hedge Provider" means any Lender or any of its Affiliates; provided, however, that no such Person (other than Wells Fargo or its Affiliates) shall constitute a Hedge Provider unless and until Agent shall have received a Bank Product Provider Letter Agreement from such Person and with respect to the applicable Hedge Agreement within 10 days after the execution and delivery of such Hedge Agreement with Borrower or its Subsidiaries; provided, further, however, that if, at any time, a Lender ceases to be a Lender under the Agreement, then, from and after the date on which it ceases to be a Lender thereunder, neither it nor any of its Affiliates shall constitute Hedge Providers and the obligations with respect to Hedge Agreements entered into with such former Lender or any of its Affiliates shall no longer constitute Hedge Obligations.

"Holdout Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Indebtedness" as to any Person means (a) all obligations of such Person for borrowed money, (b) all obligations of such Person evidenced by bonds, debentures, notes, or other similar instruments and all reimbursement or other obligations in respect of letters of credit, bankers acceptances, or other financial products, (c) all obligations of such Person as a lessee under Capital Leases, (d) all obligations or liabilities of others secured by a Lien on any asset of such Person, irrespective of whether such obligation or liability is assumed, (e) all obligations of such Person to pay the deferred purchase price of assets (other than trade payables incurred in the ordinary course of business and repayable in accordance with customary trade practices), (f) all obligations of such Person owing under Hedge Agreements (which amount shall be calculated based on the amount that would be payable by such Person if the Hedge Agreement were terminated on the date of determination), (g) any Prohibited Preferred Stock of such Person, (h) obligations evidenced by the Tax Restructuring Agreements **[and the Trade Payable Restructuring Agreements]**, and (i) any obligation of such Person guaranteeing or intended to guarantee (whether directly or indirectly guaranteed, endorsed, co-made, discounted, or sold with recourse) any obligation of any other Person that constitutes Indebtedness under any of clauses (a) through (h) above. For purposes of this definition, (i) the amount of any Indebtedness represented by a guaranty or other similar instrument shall be the lesser of the principal amount of the obligations guaranteed and still outstanding and the maximum amount for which the guaranteeing Person may be liable pursuant to the terms of the instrument embodying such Indebtedness, and (ii) the amount of any Indebtedness described in clause (d) above shall be the lower of the amount of the obligation and the fair market value of the assets of such Person securing such obligation.

"Indemnified Liabilities" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Person" has the meaning specified therefor in Section 10.3 of the Agreement.

"Indemnified Taxes" means (a) Taxes, other than Excluded Taxes, imposed on or with respect to any payment made by, or on account of any obligation of, any Loan Party under any Loan Document and (b) to the extent not otherwise described in (a), Other Taxes.

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

"Intercompany Subordination Agreement" means an intercompany subordination agreement, dated as of the Closing Date, executed and delivered by Borrower, each of its Subsidiaries and Agent, the form and substance of which is reasonably satisfactory to Agent.

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

"Interest Period" means, with respect to each LIBOR Rate Loan, a period commencing on the date of the making of such LIBOR Rate Loan (or the continuation of a

LIBOR Rate Loan or the conversion of a Base Rate Loan to a LIBOR Rate Loan) and ending 1, 2 or 3 months thereafter; provided, however, that (a) interest shall accrue at the applicable rate based upon the LIBOR Rate from and including the first day of each Interest Period to, but excluding, the day on which any Interest Period expires, (b) any Interest Period that would end on a day that is not a Business Day shall be extended to the next succeeding Business Day unless such Business Day falls in another calendar month, in which case such Interest Period shall end on the next preceding Business Day, (c) with respect to an Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period), the Interest Period shall end on the last Business Day of the calendar month that is 1, 2 or 3 months after the date on which the Interest Period began, as applicable, and (d) Borrower may not elect an Interest Period which will end after the Maturity Date.

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

"Investment" means, with respect to any Person, any investment by such Person in any other Person (including Affiliates) in the form of loans, guarantees, advances, capital contributions (excluding (a) commission, travel, and similar advances to officers and employees of such Person made in the ordinary course of business, and (b) *bona fide* Accounts arising in the ordinary course of business), or acquisitions of Indebtedness, Stock, or all or substantially all of the assets of such other Person (or of any division or business line of such other Person), and any other items that are or would be classified as investments on a balance sheet prepared in accordance with GAAP.

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

"Issuing Lender" means WFCF or any other Lender that, at the request of Borrower and with the consent of Agent, agrees, in such Lender's sole discretion, to become an Issuing Lender for the purpose of issuing Letters of Credit or Reimbursement Undertakings pursuant to Section 2.11 of the Agreement and the Issuing Lender shall be a Lender.

"Lender" has the meaning set forth in the preamble to the Agreement, shall include the Issuing Lender and the Swing Lender, and shall also include any other Person made a party to the Agreement pursuant to the provisions of Section 13.1 of the Agreement and "Lenders" means each of the Lenders or any one or more of them.

"Lender Group" means each of the Lenders (including the Issuing Lender and the Swing Lender) and Agent, or any one or more of them.

"Lender Group Expenses" means all (a) costs or expenses (including taxes, and insurance premiums) required to be paid by Borrower or its Subsidiaries under any of the Loan Documents that are paid, advanced, or incurred by the Lender Group, (b) to the extent not otherwise covered by clauses (c), (d), (e), (f), (g), (h) or (i) below, out-of-pocket fees or charges paid or incurred by Agent in connection with the Lender Group's transactions with Borrower or its Subsidiaries under any of the Loan Documents, including, fees or charges for photocopying, notarization, couriers and messengers, telecommunication, public record searches (including tax lien, litigation, and UCC searches and including searches with the patent and trademark office, the copyright office, or the department of motor vehicles), filing, recording, publication,

appraisal (including periodic collateral appraisals or business valuations to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter), real estate surveys, real estate title policies and endorsements, and environmental audits, (c) Agent's customary fees and charges in connection with the disbursement of funds to Borrower or other members of the Lender Group (by wire transfer or otherwise), (d) reasonable out-of-pocket charges paid or incurred by Agent resulting from the dishonor of checks payable by or to any Loan Party, (e) reasonable out-of-pocket costs and expenses paid or incurred by the Lender Group to correct any default or enforce any provision of the Loan Documents, or during the continuance of an Event of Default, in gaining possession of, maintaining, handling, preserving, storing, shipping, selling, preparing for sale, or advertising to sell the Collateral, or any portion thereof, irrespective of whether a sale is consummated, (f) reasonable out-of-pocket audit fees and expenses (including travel, meals, and lodging) of Agent related to any inspections or audits to the extent of the fees and charges (and up to the amount of any limitation) contained in the Agreement or the Fee Letter, (g) reasonable out-of-pocket costs and expenses of third party claims or any other suit paid or incurred by the Lender Group in enforcing or defending the Loan Documents or in connection with the transactions contemplated by the Loan Documents or the Lender Group's relationship with Borrower or any of its Subsidiaries, (h) Agent's reasonable costs and expenses (including reasonable attorneys fees) incurred in advising, structuring, drafting, reviewing, administering (including travel, meals, and lodging), syndicating, or amending the Loan Documents, and (i) Agent's and each Lender's reasonable costs and expenses (including reasonable attorneys, accountants, consultants, and other advisors fees and expenses) incurred in terminating, enforcing (including attorneys, accountants, consultants, and other advisors fees and expenses incurred in connection with a "workout," a "restructuring," or an Insolvency Proceeding concerning Borrower or any of its Subsidiaries or in exercising rights or remedies under the Loan Documents, including, without limitation, reasonable fees and expenses incurred in connection with the continuing engagement by Agent's counsel of Huron Consulting Group, Inc.), or defending the Loan Documents, irrespective of whether suit is brought, or in taking any Remedial Action concerning the Collateral.

"Lender Group Representatives" has the meaning specified therefor in Section 17.9 of the Agreement.

"Lender-Related Person" means, with respect to any Lender, such Lender, together with such Lender's Affiliates, officers, directors, employees, attorneys, and agents.

"Letter of Credit" means a letter of credit issued by Issuing Lender or a letter of credit issued by Underlying Issuer, as the context requires.

"Letter of Credit Collateralization" means either (a) providing cash collateral (pursuant to documentation reasonably satisfactory to Agent, including provisions that specify that the Letter of Credit fee and all usage charges set forth in the Agreement will continue to accrue while the Letters of Credit are outstanding) to be held by Agent for the benefit of those Lenders with a Revolver Commitment in an amount equal to 105% of the then existing Letter of Credit Usage, (b) causing the Letters of Credit to be returned to the Issuing Lender, or (c) providing Agent with a standby letter of credit, in form and substance reasonably satisfactory to Agent, from a commercial bank reasonably acceptable to Agent in an amount equal to 105% of the then existing Letter of Credit Usage (it being understood that the Letter of Credit fee and all usage charges set forth in the Agreement will continue to accrue while the Letters of Credit

are outstanding and that any such fees that accrue must be an amount that can be drawn under any such standby letter of credit).

"Letter of Credit Disbursement" means a payment made by Issuing Lender or Underlying Issuer pursuant to a Letter of Credit.

"Letter of Credit Usage" means, as of any date of determination, the aggregate undrawn amount of all outstanding Letters of Credit.

"LIBOR Deadline" has the meaning specified therefor in Section 2.12(b)(i) of the Agreement.

"LIBOR Notice" means a written notice in the form of Exhibit L-1.

"LIBOR Option" has the meaning specified therefor in Section 2.12(a) of the Agreement.

"LIBOR Rate" means the rate per annum appearing on Macro*World's (https://capitalmarkets.mworld.com) ("the "Service"), PAGE BBA LIBOR-USD (or on any substitute page of such Service or any successor to or substitute for such Service) 2 Business Days prior to the commencement of the requested Interest Period, for a term, and in an amount, comparable to the Interest Period and the amount of the LIBOR Rate Loan requested (whether as an initial LIBOR Rate Loan or as a continuation of a LIBOR Rate Loan or as a conversion of a Base Rate Loan to a LIBOR Rate Loan) by Borrower in accordance with the Agreement, adjusted by the reserve percentage prescribed by applicable Governmental Authority (and, if any such rate is below zero, the LIBOR Rate shall be deemed to be zero), which determination shall be made by Agent and shall be conclusive in the absence of manifest error.

"LIBOR Rate Loan" means each portion of an Advance that bears interest at a rate determined by reference to the LIBOR Rate.

"LIBOR Rate Margin" means, as of any date of determination (with respect to any portion of the outstanding Advances on such date that is a LIBOR Rate Loan), the applicable margin set forth in the following table that corresponds to the Monthly Average Excess Availability Amount for the most recently ended month:

Level	Monthly Average Excess Availability Amount	LIBOR Rate Margin for Advances
I	$\leq$ $15,000,000	2.50 percentage points
II	> $15,000,000 but < $25,000,000	2.25 percentage points
III	$\geq$ $25,000,000	2.00 percentage points

The LIBOR Rate Margin shall be based upon the most recent Monthly Average Excess Availability Amount, which will be calculated as of the end of each fiscal month. If Borrower fails to provide the information necessary to calculate the Monthly Average Excess

Availability Amount, the LIBOR Rate Margin shall be set at the margin in the row styled "Level I" until the date on which such information is delivered (on which date (but not retroactively), without constituting a waiver of any Default or Event of Default occasioned by the failure to timely deliver such information, the LIBOR Rate Margin shall be set at the margin based upon the calculations disclosed by such information).

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

"Loan Account" has the meaning specified therefor in Section 2.9 of the Agreement.

"Loan Documents" means the Agreement, any Borrowing Base Certificate, the Controlled Account Agreements, the Control Agreements, the Fee Letter, the Guaranty, the Intercompany Subordination Agreement, the Letters of Credit, the Mortgages, the Security Agreement, the Trademark Security Agreement, any note or notes executed by Borrower in connection with the Agreement and payable to any member of the Lender Group, any letter of credit application entered into by Borrower in connection with the Agreement, and any other agreement entered into, now or in the future, by Borrower or any of its Subsidiaries and any member of the Lender Group in connection with the Agreement (other than Bank Product Agreements and Hedge Agreements).

"Loan Party" means Borrower or any Guarantor.

"Management Investors" means the officers, directors, employees and other members of the management of any Parent Entity, New Holdings, the Borrower or any of their respective Subsidiaries, or family members or relatives of any of the foregoing (provided that, solely for purposes of the definition of "Permitted Holders," such relatives shall include only those Persons who are or become Management Investors in connection with estate planning for or inheritance from other Management Investors, as determined in good faith by the Borrower, which determination shall be conclusive), or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, capital Stock of New Holdings, the Borrower, any Restricted Subsidiary (as such term is defined in the Term Debt Loan Agreement) or any Parent Entity.

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

"Material Adverse Change" means (a) a material adverse change in the business, operations, results of operations, assets, liabilities or financial condition of Borrower and its Subsidiaries, taken as a whole, (b) a material impairment of Borrower's and its Subsidiaries ability to perform their obligations under the Loan Documents to which they are parties or of the Lender Group's ability to enforce the Obligations or realize upon the Collateral, or (c) a material

impairment of the enforceability or priority of Agent's Liens with respect to the Collateral as a result of an action or failure to act on the part of Borrower or its Subsidiaries.

"Material Contract" means, with respect to any Person, (i) each contract or agreement to which such Person or any of its Subsidiaries is a party involving aggregate consideration payable to or by such Person or such Subsidiary of $2,500,000 or more (other than purchase orders in the ordinary course of the business of such Person or such Subsidiary and other than contracts that by their terms may be terminated by such Person or Subsidiary in the ordinary course of its business upon less than 60 days' notice without penalty or premium), and (ii) all other contracts or agreements, the loss of which could reasonably be expected to result in a Material Adverse Change.

"Maturity Date" has the meaning specified therefor in Section 3.3 of the Agreement.

"Maximum Revolver Amount" means $75,000,000, decreased by the amount of reductions in the Revolver Commitments made in accordance with Section 2.4(c).

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

"Monthly Average Excess Availability Amount" has the meaning specified therefor in the definition of Base Rate Margin.

"Mortgages" means, individually and collectively, one or more mortgages, deeds of trust, or deeds to secure debt, executed and delivered by Borrower or its Subsidiaries in favor of Agent, in form and substance reasonably satisfactory to Agent, that encumber the Real Property of Borrower or its Subsidiaries.

"Net Cash Proceeds" means:

(a) with respect to any sale or disposition by Borrower or any of its Subsidiaries of assets, the amount of cash proceeds received (directly or indirectly) from time to time (whether as initial consideration or through the payment of deferred consideration) by or on behalf of Borrower or its Subsidiaries, in connection therewith after deducting therefrom only (i) the amount of any Indebtedness secured by any Permitted Lien on any asset (other than (A) Indebtedness owing to Agent or any Lender under the Agreement or the other Loan Documents and (B) Indebtedness assumed by the purchaser of such asset) which is required to be, and is, repaid in connection with such sale or disposition, (ii) reasonable fees, commissions, and expenses related thereto and required to be paid by Borrower or such Subsidiary in connection with such sale or disposition and (iii) taxes paid or payable to any taxing authorities by Borrower or such Subsidiary (or, so long as Borrower is a Subsidiary of New Holdings that is treated as a disregarded entity or partnership for U.S. federal income tax purposes or is treated as a member of New Holdings' consolidated group for the purposes of filing a consolidated federal income tax return, tax distributions paid or payable to New Holdings to permit New Holdings to pay federal and state income taxes then due and owing by New Holdings under applicable law on the taxable income of Borrower) in connection with

such sale or disposition, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, and are properly attributable to such transaction; and

(b) with respect to the issuance or incurrence of any Indebtedness by Borrower or any of its Subsidiaries, or the issuance by Borrower or any of its Subsidiaries of any shares of its Stock, the aggregate amount of cash received (directly or indirectly) from time to time (whether as initial consideration or through the payment or disposition of deferred consideration) by or on behalf of Borrower or such Subsidiary in connection with such issuance or incurrence, after deducting therefrom only (i) reasonable fees, commissions, and expenses related thereto and required to be paid by Borrower or such Subsidiary in connection with such issuance or incurrence, (ii) taxes paid or payable to any taxing authorities by Borrower or such Subsidiary in connection with such issuance or incurrence, in each case to the extent, but only to the extent, that the amounts so deducted are, at the time of receipt of such cash, actually paid or payable to a Person that is not an Affiliate of Borrower or any of its Subsidiaries, and are properly attributable to such transaction.

"Net Liquidation Percentage" means the percentage of the book value of Borrower's Inventory that is estimated to be recoverable in an orderly liquidation of such Inventory net of all associated costs and expenses of such liquidation, such percentage to be as determined from time to time by an appraisal company selected by Agent. At Agent's option, Net Liquidation Percentage may be calculated separately for different categories of Inventory.

"New Holdings" means Boomerang Tube Holdings, Inc., a Delaware corporation.

"Obligations" means (a) all loans (including the Advances (inclusive of Protective Advances and Swing Loans)), debts, principal, interest (including any interest that accrues after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), reimbursement or indemnification obligations with respect to Reimbursement Undertakings or with respect to Letters of Credit (irrespective of whether contingent), premiums, liabilities (including all amounts charged to the Loan Account pursuant to the Agreement), obligations (including indemnification obligations), fees (including the fees provided for in the Fee Letter), Lender Group Expenses (including any fees or expenses that accrue after the commencement of an Insolvency Proceeding, regardless of whether allowed or allowable in whole or in part as a claim in any such Insolvency Proceeding), guaranties owing by any Loan Party pursuant to or evidenced by the Agreement or any of the other Loan Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all interest not paid when due and all other expenses or other amounts that Borrower is required to pay or reimburse by the Loan Documents or by law or otherwise in connection with the Loan Documents, (b) all debts, liabilities, or obligations (including reimbursement obligations, irrespective of whether contingent) owing by Borrower or any other Loan Party to an Underlying Issuer now or hereafter arising from or in respect of Underlying Letters of Credit, and (c) all Bank Product Obligations. Any reference in the Agreement or in the Loan Documents to the Obligations shall include all or any portion

thereof and any extensions, modifications, renewals, or alterations thereof, both prior and subsequent to any Insolvency Proceeding.

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

"Originating Lender" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Other Taxes" has the meaning specified therefor in Section 16(b) of the Agreement.

"Overadvance" has the meaning specified therefor in Section 2.5 of the Agreement.

"Parent Entity" means New Holdings and any Other Parent, and any other Person that is a Subsidiary of New Holdings or any Other Parent and of which the Borrower is a Subsidiary. As used herein, "Other Parent" means a Person of which the Borrower becomes a Subsidiary after the Closing Date, provided that either (x) immediately after the Borrower first becomes a Subsidiary of such Person, more than 50.0% of the voting Stock of such Person shall be held by one or more Persons that held more than 50.0% of the voting Stock of the Borrower or a Parent Entity of the Borrower immediately prior to the Borrower first becoming such Subsidiary or (y) such Person shall be deemed not to be an Other Parent for the purpose of determining whether a Change of Control shall have occurred by reason of the Borrower first becoming a Subsidiary of such Person.

"Participant" has the meaning specified therefor in Section 13.1(e) of the Agreement.

"Patriot Act" has the meaning specified therefor in Section 4.18 of the Agreement.

"Payoff Date" means the first date on which all of the Obligations are paid in full and the Commitments of the Lenders are terminated.

"Perfection Certificate" means a certificate in the form of Exhibit P-1 to the Agreement.

"Permitted Acquisition" means any Acquisition so long as:

(a) no Default or Event of Default shall have occurred and be continuing or would result from the consummation of the proposed Acquisition and the proposed Acquisition is consensual,

(b) no Indebtedness will be incurred, assumed, or would exist with respect to Borrower or its Subsidiaries as a result of such Acquisition other than Permitted Indebtedness, and no Liens will be incurred, assumed, or would exist with respect to the assets of Borrower or its Subsidiaries as a result of such Acquisition other than Permitted Liens,

(c) Borrower has provided Agent with written confirmation, supported by reasonably detailed calculations, that on a pro forma basis (including pro forma adjustments arising out of events which are directly attributable to such proposed Acquisition, are factually supportable, and are expected to have a continuing impact, in each case, determined as if the combination had been accomplished at the beginning of the relevant period; such eliminations and inclusions to be mutually and reasonably agreed upon by Borrower and Agent) created by adding the historical combined financial statements of Borrower (including the combined financial statements of any other Person or assets that were the subject of a prior Permitted Acquisition during the relevant period) to the historical consolidated financial statements of the Person to be acquired (or the historical financial statements related to the assets to be acquired) pursuant to the proposed Acquisition, Borrower and its Subsidiaries (i) would have been in compliance with the financial covenants in Section 7 of the Agreement for the 12 fiscal month period ended immediately prior to the proposed date of consummation of such proposed Acquisition, and (ii) are projected to be in compliance with the financial covenants in Section 7 of the Agreement for the 12 fiscal month period ended one year after the proposed date of consummation of such proposed Acquisition,

(d) Borrower has provided Agent with its due diligence package relative to the proposed Acquisition, including forecasted balance sheets, profit and loss statements, and cash flow statements of the Person or assets to be acquired, all prepared on a basis consistent with such Person's (or assets') historical financial statements, together with appropriate supporting details and a statement of underlying assumptions for the 1 year period following the date of the proposed Acquisition, on a quarter by quarter basis), in form and substance (including as to scope and underlying assumptions) reasonably satisfactory to Agent,

(e) Borrower shall have Excess Availability plus Qualified Cash in an amount equal to or greater than $20,000,000 immediately after giving effect to the consummation of the proposed Acquisition,

(f) the assets being acquired or the Person whose Stock is being acquired did not have negative EBITDA during the 12 consecutive month period most recently concluded prior to the date of the proposed Acquisition,

(g) Borrower has provided Agent with written notice of the proposed Acquisition at least 15 Business Days prior to the anticipated closing date of the proposed Acquisition and, not later than 5 Business Days prior to the anticipated closing date of the proposed Acquisition, copies of the acquisition agreement and other material documents relative to the proposed Acquisition, which agreement and documents must be reasonably acceptable to Agent,

(h) the assets being acquired (other than a de minimis amount of assets in relation to Borrower's and its Subsidiaries' total assets), or the Person whose Stock is being acquired, are useful in or engaged in, as applicable, the business of Borrower and its Subsidiaries or a business reasonably related thereto,

(i) the assets being acquired (other than a de minimis amount of assets in relation to the assets being acquired) are located within the United States, or the Person whose Stock is being acquired is organized in a jurisdiction located within the United States,

(j) the subject assets or Stock, as applicable, are being acquired directly by a Borrower or one of its Subsidiaries that is a Loan Party, and, in connection therewith, Borrower or the applicable Loan Party shall have complied with Section 5.11 or 5.12 of the Agreement, as applicable, of the Agreement and, in the case of an acquisition of Stock, Borrower or the applicable Loan Party shall have demonstrated to Agent that the new Loan Parties have received consideration sufficient to make the joinder documents binding and enforceable against such new Loan Parties,

(k) the purchase consideration payable in respect of all Permitted Acquisitions (including the proposed Acquisition and including deferred payment obligations) shall not exceed $25,000,000 in the aggregate, and

(l) such Acquisition is consummated after July 1, 2016.

"Permitted Discretion" means a determination made in the exercise of reasonable (from the perspective of a secured lender) business judgment.

"Permitted Dispositions" means:

(a) sales, abandonment, or other dispositions of Equipment that is substantially worn, damaged, or obsolete in the ordinary course of business;

(b) sales of Inventory to buyers in the ordinary course of business,

(c) the use or transfer of money or Cash Equivalents in a manner that is not prohibited by the terms of the Agreement or the other Loan Documents,

(d) the licensing, on a non-exclusive basis, of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(e) the granting of Permitted Liens,

(f) the sale or discount, in each case without recourse, of Accounts arising in the ordinary course of business, but only in connection with the compromise or collection thereof,

(g) any involuntary loss, damage or destruction of property,

(h) any involuntary condemnation, seizure or taking, by exercise of the power of eminent domain or otherwise, or confiscation or requisition of use of property,

(i) the leasing or subleasing of assets of Borrower or its Subsidiaries in the ordinary course of business,

(j) the sale or issuance of Stock (other than Prohibited Preferred Stock) of Borrower,

(k) the lapse of registered patents, trademarks and other intellectual property of Borrower and its Subsidiaries to the extent not economically desirable in the conduct of their business and so long as such lapse is not materially adverse to the interests of the Lenders,

(l) the making of a Restricted Junior Payment that is expressly permitted to be made pursuant to the Agreement,

(m) the making of a Permitted Investment,

(n) any trade-in of Equipment in exchange for the Equipment in the ordinary course of business,

(o) any disposition by any Subsidiary of Borrower to Borrower or by Borrower or any of its Subsidiaries to a Subsidiary of Borrower that is a Loan Party, and

(p) any transfer, conveyance, sale lease or other disposition of Equipment or Real Property, in an arms-length transaction provided that no Event of Default is continuing and that the fair market value of all such Equipment or Real Property disposed of does not exceed $5,000,000 per year.

"Permitted Holders" (i) holders of the capital Stock of New Holdings on the Closing Date and their respective Affiliates and Controlled Investment Affiliates and (ii) the Management Investors and their respective Affiliates.

"Permitted Indebtedness" means

(a) Indebtedness evidenced by the Agreement or the other Loan Documents, as well as Indebtedness owed to Underlying Issuers with respect to Underlying Letters of Credit,

(b) Indebtedness set forth on Schedule 4.19 and any Refinancing Indebtedness in respect of such Indebtedness,

(c) Permitted Purchase Money Indebtedness and Capital Lease Obligations and any Refinancing Indebtedness in respect of such Indebtedness,

(d) endorsement of instruments or other payment items for deposit,

(e) Indebtedness consisting of (i) unsecured guarantees, reimbursement obligations and indemnification obligations incurred in the ordinary course of business with respect to surety and appeal bonds, performance bonds, bid bonds, appeal bonds, completion guarantee and similar obligations; (ii) unsecured guarantees arising with respect to customary indemnification obligations to purchasers in connection with Permitted Dispositions; and (iii) unsecured guarantees with respect to

Indebtedness of Borrower or one of its Subsidiaries, to the extent that the Person that is obligated under such guaranty could have incurred such underlying Indebtedness,

(f) Indebtedness incurred in the ordinary course of business under indemnity, performance, surety, statutory, appeal and similar bonds, worker's compensation claims, bonds, letters of credit and completion guarantees,

(g) Indebtedness owed to any Person providing property, casualty, liability, or other insurance to Borrower or any of its Subsidiaries, so long as the amount of such Indebtedness is not in excess of the amount of the unpaid cost of, and shall be incurred only to defer the cost of, such insurance for the 365-day period in which such Indebtedness is incurred and such Indebtedness is outstanding only during such 365-day period,

(h) the incurrence by Borrower or its Subsidiaries of Indebtedness under Hedge Agreements that are incurred for the bona fide purpose of hedging the interest rate, commodity, or foreign currency risks associated with Borrower's and its Subsidiaries' operations and not for speculative purposes,

(i) Indebtedness incurred in respect of credit cards, credit card processing services, debit cards, stored value cards, purchase cards (including so-called "procurement cards" or "P-cards"), or Cash Management Services, in each case, incurred in the ordinary course of business,

(j) unsecured Indebtedness of Borrower owing to former employees, officers, or directors (or any spouses, ex-spouses, or estates of any of the foregoing) incurred in connection with the repurchase by Borrower of the Stock of Borrower that has been issued to such Persons, so long as (i) no Default or Event of Default has occurred and is continuing or would result from the incurrence of such Indebtedness, (ii) the aggregate amount of all such Indebtedness outstanding at any one time does not exceed $250,000 and (iii) such Indebtedness is subordinated to the Obligations on terms and conditions reasonably acceptable to Agent,

(k) (i) the Term Debt in an aggregate principal amount not to exceed $60,000,000 plus any increase to the principal amount thereof in accordance with the incremental facility described in Section 2.6 of the Term Debt Loan Agreement, in the form of capitalized (PIK) interest pursuant to the Term Debt Documents and in the form of any refinancing of such Indebtedness, to the extent permitted by the Term Debt Intercreditor Agreement, and (ii) the Subordinated Term Debt in an aggregate principal amount not to exceed $55,000,000 plus (A) any increase to the principal thereof in the form of capitalized (PIK) interest pursuant to the Subordinated Term Debt Documents and (B) any additional increase to the principal thereof in an aggregate amount collectively with any Indebtedness incurred pursuant to clause (w) below, not exceeding the greater of $10,000,000 and 5% of Consolidated Total Assets at any time, and any refinancing of such Indebtedness, to the extent permitted by the Subordinated Term Debt Intercreditor Agreement,

(l) contingent liabilities in respect of any indemnification obligation, adjustment of purchase price, non-compete, or similar obligation of Borrower or the applicable Loan Party incurred in connection with the consummation of one or more Permitted Acquisitions,

(m) Indebtedness comprising Permitted Investments,

(n) Indebtedness to Encana in an amount not to exceed $[**15,000,000]**,

(o) Indebtedness to any holder of an SBI Secured Note (as defined in the Plan of Reorganization) in an aggregate amount for all holders not to exceed $**[5,000,000]**,

(p) Guarantees of the Indebtedness under the Loan Documents,

(q) Guarantees by Borrower of Indebtedness of a Subsidiary of Borrower, provided that such Indebtedness is Permitted Indebtedness,

(r) Indebtedness arising from agreements of Borrower or a Subsidiary of Borrower providing for customary indemnification in connection with a Permitted Disposition,

(s) Guarantees by any Subsidiary of Borrower of Indebtedness of Borrower or any Subsidiary of Borrower, provided that such Indebtedness is Permitted Indebtedness,

(t) unsecured Indebtedness of Borrower or its Subsidiaries in respect of Earn-Outs owing to sellers of assets or Stock to Borrower or its Subsidiaries that is incurred in connection with the consummation of one or more Permitted Acquisitions so long as such unsecured Indebtedness is on terms and conditions reasonably acceptable to Agent,

(u) unsecured Indebtedness of Borrower that is incurred on the date of the consummation of a Permitted Acquisition solely for the purpose of consummating such Permitted Acquisition so long as (i) no Event of Default has occurred and is continuing or would result therefrom, (ii) such unsecured Indebtedness is not incurred for working capital purposes, (iii) such unsecured Indebtedness does not mature prior to the date that is 12 months after the Maturity Date, (iv) such unsecured Indebtedness does not amortize until 12 months after the Maturity Date, and (v) such Indebtedness is subordinated in right of payment to the Obligations on terms and conditions reasonably satisfactory to Agent (including, without limitation, terms which provide that no payment of interest may be made on such Indebtedness at any time that an Event of Default has occurred and is continuing),

(v) Indebtedness evidenced by the Tax Restructuring Agreement**[and the Trade Payable Restructuring Agreements**], and

(w) other unsecured Indebtedness of the Borrower or any of its Subsidiaries in an aggregate amount not to exceed, collectively with any Indebtedness

incurred pursuant to clause (k)(ii)(B) above, an amount equal to the greater of $10,000,000 and 5% of Consolidated Total Assets at any time.

"Permitted Intercompany Advances" means loans made by (a) a Loan Party to another Loan Party, (b) a non-Loan Party to another non-Loan Party, (c) a non-Loan Party to a Loan Party, so long as the parties thereto are party to the Intercompany Subordination Agreement, and (d) a Loan Party to a non-Loan Party so long as (i) the amount of such loans does not exceed $3,000,000 outstanding at any one time, (ii) no Event of Default has occurred and is continuing or would result therefrom, and (iii) Borrower has Excess Availability plus Qualified Cash of $10,000,000 or greater immediately after giving effect to each such loan.

"Permitted Investments" means:

(a) Investments in cash and Cash Equivalents,

(b) Investments in negotiable instruments deposited or to be deposited for collection in the ordinary course of business,

(c) advances made in connection with purchases of goods or services in the ordinary course of business,

(d) Investments received in settlement of amounts due to any Loan Party or any of its Subsidiaries effected in the ordinary course of business or owing to any Loan Party or any of its Subsidiaries as a result of Insolvency Proceedings involving an Account Debtor or upon the foreclosure or enforcement of any Lien in favor of a Loan Party or its Subsidiaries,

(e) Investments owned by any Loan Party or any of its Subsidiaries on the Closing Date and set forth on Schedule P-1,

(f) guarantees permitted under the definition of Permitted Indebtedness,

(g) Permitted Intercompany Advances,

(h) Stock or other securities acquired in connection with the satisfaction or enforcement of Indebtedness or claims due or owing to a Loan Party or its Subsidiaries (in bankruptcy of customers or suppliers or otherwise outside the ordinary course of business) or as security for any such Indebtedness or claims,

(i) deposits of cash made in the ordinary course of business to secure performance of operating leases,

(j) non-cash loans to employees, officers, and directors of Borrower or any of its Subsidiaries for the purpose of purchasing Stock in Borrower so long as the proceeds of such loans are used in their entirety to purchase such stock in Borrower,

(k) Investments resulting from entering into (i) Bank Product Agreements, or (ii) agreements relative to Indebtedness that is permitted under clause (j) of the definition of Permitted Indebtedness,

(l) so long as no Event of Default has occurred and is continuing or would result therefrom, (i) Investments resulting from exercising buyout options under the Borrower's operating leases with Tuboscope, a Division of National Oilwell Varco, LP and Cudd Pressure Control, Inc. (d/b/a Patterson Tubular Services) in an aggregate amount not to exceed $3,500,000, and (ii) any other Investments (other than Acquisitions) in an aggregate amount not to exceed $2,500,000 during the term of the Agreement,

(m) payroll, travel and similar advances to employees of Borrower in the ordinary course of business to cover matters that are expected at the time of such advances ultimately to be treated as expenses for accounting purposes and that are consistent with past practice, and

(n) Permitted Acquisitions.

"Permitted Liens" means:

(a) Liens granted to, or for the benefit of, Agent to secure the Obligations,

(b) Liens for unpaid taxes, assessments, or other governmental charges or levies that are not yet delinquent and the underlying taxes, assessments, or charges or levies are the subject of Permitted Protests,

(c) judgment Liens arising solely as a result of the existence of judgments, orders, or awards that do not constitute an Event of Default under Section 8.3 of the Agreement,

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

(e) leases, subleases, licenses or sublicenses granted to others in the ordinary course of business so long as such leases, subleases, licenses or sublicenses do not materially interfere with the ordinary conduct of the business of the Borrower or any of its Subsidiaries and do not secure any Indebtedness,

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

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

(h) Liens on amounts deposited to secure Borrower's and its Subsidiaries obligations in connection with worker's compensation or other unemployment insurance,

(i) Liens on amounts deposited to secure Borrower's and its Subsidiaries obligations in connection with the making or entering into of bids, tenders, leases, purchase, construction, sales or servicing contracts in the ordinary course of business and not in connection with the borrowing of money,

(j) Liens on amounts deposited to secure Borrower's and its Subsidiaries reimbursement obligations with respect to surety, performance or appeal bonds obtained in the ordinary course of business and pledges on amounts deposited to obtain or secure obligations with respect to letters of credit, bonds or other sureties or assurances given in the ordinary course of business in connection with the activities described in clauses (h) and (i) above and this clause (j) in the ordinary course of business,

(k) with respect to any Real Property, easements, rights of way, and zoning restrictions and other similar restrictions as to the use of Real Properties that do not materially interfere with or impair the use or operation thereof,

(l) licenses of patents, trademarks, copyrights, and other intellectual property rights in the ordinary course of business,

(m) Liens that are replacements of Permitted Liens to the extent that the original Indebtedness is the subject of permitted Refinancing Indebtedness and so long as the replacement Liens only encumber those assets that secured the original Indebtedness,

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

(o) Liens granted in the ordinary course of business on the unearned portion of insurance premiums securing the financing of insurance premiums to the extent the financing is permitted under the definition of Permitted Indebtedness,

(p) Liens in favor of customs and revenue authorities arising as a matter of law to secure payment of customs duties in connection with the importation of goods,

(q) Liens on the SBI Heat Treat Line Collateral (as defined in the Plan of Reorganization) (i) to be retained by the SBI Lender (as defined in the Plan of Reorganization), in the event its secured claim is reinstated, or (ii) to secure the SBI Secured Notes in favor of any holder of an SBI Secured Note (as defined in the Plan of Reorganization),

(r) Liens on the assets of Borrower to secure the Term Debt, but only so long as the Term Agent has executed the Term Debt Intercreditor Agreement subordinating its Liens on the ABL Priority Collateral to Agent's Liens,

(s) Liens on the Collateral to secure the Subordinated Term Debt, but only so long as the Subordinated Term Agent has executed the Subordinated Term Debt Intercreditor Agreement subordinating its Liens on the Collateral to Agent's Liens,

(t) Liens on Inventory and Accounts in favor of Encana, but only so long as Encana has executed and delivered to Agent an intercreditor agreement in the form of Exhibit P-2 attached hereto subordinating its Liens on the Inventory and Accounts to Agent's Liens,

(u) Liens arising from precautionary UCC financing statement filings regarding operating leases entered into by Borrower or any of its Subsidiaries in the ordinary course of business,

(v) Liens arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into by Borrower or any of its Subsidiaries in the ordinary course of business,

(w) Liens on amounts deposited securing Hedge Agreements permitted hereunder so long as the related Indebtedness is, and is permitted to be hereunder, secured by a Lien on the same property securing such Hedge Agreement, and

(x) Liens on the Collateral (other than the ABL Priority Collateral) as to which the aggregate amount of the obligations secured thereby does not exceed $1,000,000.

"Permitted Preferred Stock" means and refers to any Preferred Stock issued by Borrower (and not by one or more of its Subsidiaries) that is not Prohibited Preferred Stock.

"Permitted Protest" means the right of Borrower or any of its Subsidiaries to protest any Lien (other than any Lien that secures the Obligations), taxes, or rental payment, provided that (a) a reserve with respect to such obligation is established on Borrower's or its Subsidiaries' books and records in such amount as is required under GAAP, (b) any such protest is instituted promptly and prosecuted diligently by Borrower or its Subsidiary, as applicable, in good faith, (c) Borrower provides Agent with notice of such protest and (d) Agent is satisfied in its Permitted Discretion that, while any such protest is pending, there will be no impairment of the enforceability, validity, or priority of any of Agent's Liens.

"Permitted Purchase Money Indebtedness" means, as of any date of determination, Purchase Money Indebtedness incurred after the Closing Date in an aggregate principal amount outstanding at any one time not in excess of $10,000,000, without regard to the Purchase Money Indebtedness permitted under clause (o) of the definition of Permitted Indebtedness.

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

"Plan Effective Date" has the meaning provided therefor in the Plan of Reorganization.

"Plan of Reorganization" has the meaning provided in the recitals hereto.

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

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

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

"Pro Rata Share" means, as of any date of determination:

(a) subject to Section 2.3(b), with respect to a Lender's obligation to make Advances and right to receive payments of principal, interest, fees, costs, and expenses with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (x) such Lender's Revolver Commitment, by (y) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (x) the outstanding principal amount of such Lender's Advances by (y) the outstanding principal amount of all Advances,

(b) subject to Section 2.11(a), with respect to a Lender's obligation to participate in Letters of Credit and Reimbursement Undertakings, to reimburse the

Issuing Lender, and right to receive payments of fees with respect thereto, (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (x) such Lender's Revolver Commitment, by (y) the aggregate Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (x) the outstanding principal amount of such Lender's Advances by (y) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero, and

(c) with respect to all other matters as to a particular Lender (including the indemnification obligations arising under Section 15.7 of the Agreement), (i) prior to the Revolver Commitments being terminated or reduced to zero, the percentage obtained by dividing (x) such Lender's Revolver Commitment, by (y) the aggregate amount of Revolver Commitments of all Lenders, and (ii) from and after the time that the Revolver Commitments have been terminated or reduced to zero, the percentage obtained by dividing (x) the outstanding principal amount of such Lender's Advances, by (y) the outstanding principal amount of all Advances; provided, however, that if all of the Advances have been repaid in full and Letters of Credit remain outstanding, Pro Rata Share under this clause shall be determined based upon subclause (i) of this clause as if the Revolver Commitments had not been terminated or reduced to zero and based upon the Revolver Commitments as they existed immediately prior to their termination or reduction to zero.

"Protective Advances" has the meaning specified therefor in Section 2.3(d)(i) of the Agreement.

"Purchase Money Indebtedness" means Indebtedness (other than the Obligations, but including Capitalized Lease Obligations), incurred at the time of, or within 20 days after, the acquisition of any fixed assets for the purpose of financing all or any part of the acquisition cost thereof.

"Qualified Cash" means, as of any date of determination, the amount of unrestricted cash and Cash Equivalents of Borrower and its Subsidiaries that is in Deposit Accounts or in Securities Accounts, or any combination thereof, and which such Deposit Account or Securities Account is the subject of a Control Agreement and is maintained by a branch office of a bank or securities intermediary located within the United States.

"Real Property Collateral" means the Real Property identified on Schedule R-1 and any Real Property hereafter acquired by Borrower or its Subsidiaries.

"Real Property" means any estates or interests in real property now owned or hereafter acquired by Borrower or its Subsidiaries and the improvements thereto.

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

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

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

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

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

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

"Register" has the meaning set forth in Section 13.1(h) of the Agreement.

"Registered Loan" has the meaning set forth in Section 13.1(h) of the Agreement.

"Reimbursement Undertaking" has the meaning specified therefor in Section 2.11(a) of the Agreement.

"Related Business" means those businesses in which the Borrower or any of its Subsidiaries is engaged on the Closing Date, or that are similar, related, complementary, incidental or ancillary thereto or extensions, developments or expansions thereof.

"Related Fund" means, with respect to any Lender that is an investment fund, any other investment fund that invests in commercial loans and that is managed or advised by the same investment advisor as such Lender or by an Affiliate of such investment advisor.

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

activities, or (e) conduct any other actions with respect to Hazardous Materials required by Environmental Laws.

"Rent Reserve" means, with respect to any location leased by a Loan Party, a reserve in the amount equal to (a) the sum of all rental payments (including, without duplication, any additional rent) scheduled to come due in the next 3 months for such location (or if applicable law provides that the landlord would have a Lien (with priority over Agent's Lien) to secure past due rent for a longer period, all rental payments (including additional rent) scheduled to come due during such longer period), plus (b) any past due rent for such location.

"Reorganization Documents" means (a) the Plan of Reorganization, (b) a certificate issued by an officer of the Borrower regarding assumption of the Material Contracts, transaction costs, and cure claims, (c) a certified copy of the docket showing entry of the Confirmation Order and showing that no appeals or motions to modify were filed within fourteen days of the date on which the Confirmation Order was entered into the docket, and (d) a filing of notice of occurrence of Plan Effective Date and such other documents relating to the Bankruptcy Case as Agent may reasonably require.

"Replacement Lender" has the meaning specified therefor in Section 2.13(b) of the Agreement.

"Report" has the meaning specified therefor in Section 15.16 of the Agreement.

"Required Lenders" means, at any time, Lenders whose aggregate Pro Rata Shares (calculated under clause (c) of the definition of Pro Rata Shares) exceed 50%; provided, however, that at any time there are 2 or more Lenders, "Required Lenders" must include at least 2 Lenders.

"Restricted Junior Payment" means to (a) declare or pay any dividend or make any other payment or distribution on account of Stock issued by Borrower (including any payment in connection with any merger or consolidation involving Borrower) or to the direct or indirect holders of Stock issued by Borrower in their capacity as such (other than dividends or distributions payable in Stock (other than Prohibited Preferred Stock) issued by Borrower, or (b) purchase, redeem, or otherwise acquire or retire for value (including in connection with any merger or consolidation involving Borrower) any Stock issued by Borrower.

"Revolver Commitment" means, with respect to each Lender, its Revolver Commitment, and, with respect to all Lenders, their Revolver Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 or in the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Revolver Usage" means, as of any date of determination, the sum of (a) the amount of outstanding Advances, *plus* (b) the amount of the Letter of Credit Usage.

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

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

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

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

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

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

"Security Agreement" means a security agreement, dated as of the Closing Date, in form and substance reasonably satisfactory to Agent, executed and delivered by Borrower and Guarantors to Agent.

"Settlement" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Settlement Date" has the meaning specified therefor in Section 2.3(e)(i) of the Agreement.

"Solvent" means, with respect to any Person on a particular date, that, at fair valuations, the sum of such Person's assets is greater than all of such Person's debts.

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

"Subordinated Term Agent" means Cortland Capital Market Services LLC, as administrative agent for the lenders under the Subordinated Term Debt Loan Agreement.

"Subordinated Term Debt" means the Indebtedness under the Subordinated Term Debt Documents.

"Subordinated Term Debt Collateral" means the Loan Parties' assets subject to a Lien in favor of the Subordinated Term Agent so long as such Lien is subject to the Subordinated Term Debt Intercreditor Agreement.

"Subordinated Term Debt Documents" means (i) the "Loan Documents" and the "Security Documents", in each case as defined in the Subordinated Term Debt Loan Agreement and (ii) each other document securing or evidencing the Subordinated Term Debt; provided that any amendment, modification or extension to any of the documents in clause (i) or (ii), to the extent permitted by Section 6.7(b), shall also constitute Subordinated Term Debt Documents.

"Subordinated Term Debt Intercreditor Agreement" means that certain Subordination and Intercreditor Agreement dated as of the Closing Date among Subordinated Term Agent, Term Agent, the Loan Parties and Agent, as amended, restated, replaced or otherwise modified from time to time as permitted therein.

"Subordinated Term Debt Loan Agreement" means that certain Subordinated Notes Agreement dated as of the Closing Date among Borrower, Subordinated Term Agent and the lenders party thereto, as amended, restated, replaced or otherwise modified from time to time as permitted herein.

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

"Swing Lender" means WFCF or any other Lender that, at the request of Borrower and with the consent of Agent agrees, in such Lender's sole discretion, to become the Swing Lender under Section 2.3(b) of the Agreement.

"Swing Loan" has the meaning specified therefor in Section 2.3(b) of the Agreement.

"Taxes" means any taxes, levies, imposts, duties, fees, assessments or other charges of whatever nature now or hereafter imposed by any jurisdiction or by any political subdivision or taxing authority thereof or therein with respect to such payments and all interest, penalties or similar liabilities with respect thereto.

"Tax Lender" has the meaning specified therefor in Section 14.2(a) of the Agreement.

"Tax Restructuring Agreements" means (i) the installment agreement for the payment of delinquent taxes between Borrower and the Liberty County Tax Assessor-Collector's Office, dated as of [_____], and (ii) the installment agreement for the payment of delinquent taxes between Borrower and the [**Liberty City and School District Tax Assessor-Collector's Office**], dated as of [_____].

"Term Agent" means Cortland Capital Market Services LLC, as administrative agent for the lenders under the Term Debt Loan Agreement.

"Term Debt" means the Indebtedness under the Term Debt Documents.

"Term Debt Documents" means (i) the "Loan Documents" and the "Security Documents", in each case as defined in the Term Debt Loan Agreement and (ii) each other document securing or evidencing the Term Debt; provided that any amendment, modification or extension to any of the documents in clause (i) or (ii), to the extent permitted by Section 6.7(b), shall also constitute Term Debt Documents.

"Term Debt Intercreditor Agreement" means that certain Intercreditor Agreement dated as of the Closing Date among Term Agent, the Loan Parties and Agent, as amended, restated, replaced or otherwise modified from time to time as permitted therein.

"Term Debt Loan Agreement" means that certain Credit Agreement dated as of the Closing Date among Borrower, Term Agent and the lenders party thereto, as amended, restated, replaced or otherwise modified from time to time as permitted herein.

"Term Priority Collateral" means the "Term Loan Priority Collateral" (as such term is defined in the Term Debt Intercreditor Agreement.

"Total Commitment" means, with respect to each Lender, its Total Commitment, and, with respect to all Lenders, their Total Commitments, in each case as such Dollar amounts are set forth beside such Lender's name under the applicable heading on Schedule C-1 attached hereto or on the signature page of the Assignment and Acceptance pursuant to which such Lender became a Lender under the Agreement, as such amounts may be reduced or increased from time to time pursuant to assignments made in accordance with the provisions of Section 13.1 of the Agreement.

"Trademark Security Agreement" has the meaning specified therefor in the Security Agreement.

["Trade Payable Restructuring Agreements" means (i) the restructuring agreement between Borrower and [_____], dated as of [_____], and (ii) the restructuring agreement between Borrower and [_____], dated as of [_____].[5]]

"Transactions" means, collectively, any or all of the following: (i) the entry into this Agreement and the Loan Documents and the incurrence of Indebtedness hereunder, (ii) the consummation of the Plan of Reorganization, (iii) the refinancing of outstanding Indebtedness with proceeds of the Term Debt and the Indebtedness incurred hereunder and (iv) all other transactions relating to any of the foregoing (including payment of fees and expenses related to any of the foregoing).

"Underlying Issuer" means Wells Fargo or one of its Affiliates.

"Underlying Letter of Credit" means a Letter of Credit that has been issued by an Underlying Issuer.

"United States" means the United States of America.

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[5] NTD: These agreements are the subject of ongoing negotiations.

"Voidable Transfer" has the meaning specified therefor in Section 17.8 of the Agreement.

"Wells Fargo" means Wells Fargo Bank, National Association, a national banking association.

"WFCF" means Wells Fargo Capital Finance, LLC, a Delaware limited liability company.

Schedule 3.1

The effectiveness of the Agreement and the obligation of each Lender to make its initial extension of credit provided for in the Agreement are subject to the fulfillment, to the satisfaction of such Lender (the making of such initial extension of credit by any Lender being conclusively deemed to be its satisfaction or waiver of the following), of each of the following conditions precedent:

(a) The Closing Date shall occur on or before [_____], 2015.

(b) Agent shall have received financing statements in appropriate form for filing to perfect the Agent's Liens in and to the Collateral;

(c) Agent shall have received each of the following documents, in form and substance satisfactory to Agent, duly executed, and each such document shall be in full force and effect:

(i) a disbursement letter executed and delivered by Borrower to Agent regarding the extensions of credit, if any, to be made on the Closing Date, the form and substance of which is satisfactory to Agent,

(ii) the Fee Letter,

(iii) the Guaranty

(iv) the Security Agreement,

(v) the Perfection Certificate,

(vi) the Control Agreements,

(vii) the Mortgages

(viii) the Intercompany Subordination Agreement,

(ix) the Term Debt Intercreditor Agreement, and

(x) the Subordinated Term Debt Intercreditor Agreement.

(d) Agent shall have received a certificate from the Secretary (or any Assistant Secretary or other authorized representative) of Borrower (i) attesting to the resolutions of Borrower's Board of Directors authorizing its execution, delivery, and performance of this Agreement and the other Loan Documents to which Borrower is a party, (ii) authorizing specific officers of Borrower to execute the same, and (iii) attesting to the incumbency and signatures of such specific officers of Borrower;

(e) Agent shall have received copies of Borrower's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary (or any Assistant Secretary or other authorized representative) of Borrower;

(f) Agent shall have received a certificate of status with respect to Borrower, dated within 10 days of the Closing Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of Borrower, which certificate shall indicate that Borrower is in good standing in such jurisdiction;

(g) Agent shall have received certificates of status with respect to Borrower, each dated within 30 days of the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of Borrower) in which its failure to be duly qualified or licensed would constitute a Material Adverse Change, which certificates shall indicate that Borrower is in good standing in such jurisdictions;

(h) Agent shall have received a certificate from the Secretary (or any Assistant Secretary or other authorized representative) of each Guarantor (i) attesting to the resolutions of such Guarantor's Board of Directors authorizing its execution, delivery, and performance of the Loan Documents to which such Guarantor is a party, (ii) authorizing specific officers of such Guarantor to execute the same and (iii) attesting to the incumbency and signatures of such specific officers of Guarantor;

(i) Agent shall have received copies of each Guarantor's Governing Documents, as amended, modified, or supplemented to the Closing Date, certified by the Secretary (or any Assistant Secretary or other authorized representative) of such Guarantor;

(j) Agent shall have received a certificate of status with respect to each Guarantor, dated within 10 days of the Closing Date, such certificate to be issued by the appropriate officer of the jurisdiction of organization of such Guarantor, which certificate shall indicate that such Guarantor is in good standing in such jurisdiction;

(k) Agent shall have received certificates of status with respect to each Guarantor, each dated within 30 days of the Closing Date, such certificates to be issued by the appropriate officer of the jurisdictions (other than the jurisdiction of organization of such Guarantor) in which its failure to be duly qualified or licensed would constitute a Material Adverse Change, which certificates shall indicate that such Guarantor is in good standing in such jurisdictions;

(l) Agent shall have received a certificate of insurance, together with the endorsements thereto, as are required by Section 5.6, the form and substance of which shall be reasonably satisfactory to Agent;

(m) Agent shall have received an opinion of Loan Parties' counsel in form and substance reasonably satisfactory to Agent;

(n) Agent shall have completed its business, legal, and collateral due diligence, including (i) a collateral audit and review of Borrower's and its Subsidiaries books and records and verification of Borrower's representations and warranties to Lender Group, the results of which shall be satisfactory to Agent, (ii) an inspection of each of the locations where Borrower's and its Subsidiaries' Inventory is located, the results of which shall be satisfactory to Agent;

(o) Borrower shall have paid all Lender Group Expenses incurred in connection with the transactions evidenced by this Agreement to the extent invoiced to Borrower no later than the Closing Date;

(p) Agent shall have received flood certificates satisfactory to Lenders at least five (5) Business Days prior to the Closing Date as well as all related insurance and documents deemed necessary or appropriate by any Lender;

(q) Borrower shall have received or shall receive substantially concurrently proceeds of at least $60,000,000 of Term Debt pursuant to the terms of the Term Debt Documents;

(r) Agent shall have received evidence that the transactions contemplated by the Subordinated Term Debt Documents have been consummated or will be consummated substantially concurrently pursuant to the terms of the Subordinated Term Debt Documents;

(s) Agent shall have received copies of (i) the Term Debt Documents and (ii) the Subordinated Term Debt Documents;

(t) Borrower and each of its Subsidiaries shall have received all licenses, approvals or evidence of other actions required by any Governmental Authority in connection with the execution and delivery by Borrower or its Subsidiaries of the Loan Documents or with the consummation of the transactions contemplated thereby;

(u) all other documents and legal matters in connection with the transactions contemplated by this Agreement shall have been delivered, executed, or recorded and shall be in form and substance satisfactory to Agent;

(v) On the Closing Date, after giving effect to the transactions contemplated by this Agreement, the sum of Borrower's Excess Availability plus Qualified Cash shall be equal to at least $5,500,000;

(w) Borrower shall have delivered to Agent a fully executed copy of the Tax Restructuring Agreements [**and the Trade Payable Restructuring Agreements**], in form and substance satisfactory to Agent;

(x) Agent shall have received copies of the Reorganization Documents, in each case, in form and substance satisfactory to Agent, duly executed, and in full force and effect;

(y) a final, nonappealable Confirmation Order shall have been entered; and

(z) the Plan Effective Date shall have occurred.

Schedule 5.1

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

Weekly (no later than the 4th day of the subsequent week) or monthly (no later than the 10th day of each month), as applicable[6]	(a) a cash flow forecast for Borrower, with line item detail of projected sales, disbursements, collections, the Borrowing Base and all components thereof, and the outstanding amount of Revolver Usage for the then-upcoming thirteen (13) week period, in form and substance acceptable to Agent, together with a comparison of Borrower's actual to budgeted performance for the immediately prior week and a reconciliation of whether or not Borrower's actual aggregate disbursements and receipts as of the end of the immediately prior week were within 10% of Borrower's budgeted aggregate disbursements and receipts.
as soon as available, but in any event within 15 Business Days after the end of each month during each of Borrower's fiscal years	(b) an unaudited consolidated and consolidating balance sheet, income statement, and statement of cash flow covering Borrower's and its Subsidiaries' operations during such period.
as soon as available, but in any event within 15 Business Days after the end of each month during each of Borrower's fiscal years	(c) a Compliance Certificate (regardless of whether a Covenant Testing Period exists).
as soon as available, but in any event within 90 days after the end of each of Borrower's fiscal years	(d) consolidated and consolidating financial statements of Borrower and its Subsidiaries for each such fiscal year, audited by independent certified public accountants reasonably acceptable to Agent and certified, without any qualifications (including any (A) "going concern" or like qualification or exception (other than "going concern" qualifications solely as a result of impending maturity of the Advances within one year of the issuance of such certification), (B) qualification or exception as to the scope of such audit, or (C) qualification which relates to the treatment or classification of any item and which, as a condition to the removal of such qualification, would require an adjustment to such item, the effect of

[6] Delivery of such 13-week cash flow forecasts shall be required weekly for the period from and including the Closing Date through December 31, 2015. At all other times delivery of such 13-week cash flow forecasts shall be required monthly.

	which would be to cause any noncompliance with the provisions of Section 7), by such accountants to have been prepared in accordance with GAAP (such audited financial statements to include a balance sheet, income statement, and statement of cash flow and, if prepared, such accountants' letter to management), and (e) a Compliance Certificate (regardless of whether a Covenant Testing Period exists).
as soon as available, but in any event within 30 days prior to the start of each of Borrower's fiscal years,	(f) copies of Borrower's Projections, in form (including as to scope and underlying assumptions) reasonably satisfactory to Agent, in its Permitted Discretion, for the forthcoming 3 years, year by year, and for the forthcoming fiscal year, month by month, certified by the chief financial officer of Borrower as being such officer's good faith estimate of the financial performance of Borrower during the period covered thereby.
if and when filed by Borrower,	(g) Form 10-Q quarterly reports, Form 10-K annual reports, and Form 8-K current reports, and (h) any other filings made by Borrower with the SEC.
promptly, but in any event within 5 days after Borrower has knowledge of any event or condition that constitutes a Default or an Event of Default,	(i) notice of such event or condition and a statement of the curative action that Borrower proposes to take with respect thereto.
promptly after the commencement thereof, but in any event within 5 days after the service of process with respect thereto on Borrower or any of its Subsidiaries,	(j) notice of all actions, suits, or proceedings brought by or against Borrower or any of its Subsidiaries before any Governmental Authority which reasonably could be expected to result in a Material Adverse Change.
promptly after the commencement of labor negotiations or strikes, but in any event within 5 days after Borrower has knowledge	(k) notice of labor negotiations or strikes.

thereof,	
promptly after the termination of any Material Contract, but in any event within 5 days after Borrower has knowledge thereof,	(l) termination of any Material Contract.
upon the request of Agent,	(m) any other information reasonably requested relating to the financial condition of Borrower or its Subsidiaries.

Schedule 5.2

Provide Agent (and if so requested by Agent, with copies for each Lender) with each of the documents set forth below at the following times in form satisfactory to Agent:

Weekly (no later than the 2nd day of the subsequent week) or monthly (no later than the 10th day of each month), as applicable[7]	(a) an Account roll-forward with supporting details supplied from sales journals, collection journals, credit registers and any other records, (b) notice of all claims, offsets, or disputes asserted by Account Debtors with respect to Borrower's and its Subsidiaries' Accounts, (c) copies of open orders, invoices together with corresponding shipping and delivery documents, and credit memos together with corresponding supporting documentation, with respect to invoices and credit memos in excess of an amount determined in the sole discretion of Agent, from time to time, (d) Inventory system/perpetual reports specifying the cost and the wholesale market value of Borrower's and its Subsidiaries' Inventory, by category, with additional detail showing additions to and deletions therefrom (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting), (e) a Borrowing Base Certificate, and (f) In-transit Inventory report and such other documentation pertaining thereto as specified by Agent from time to time.

[7] Such collateral reporting shall be required weekly if Excess Availability is less than 15% of the Maximum Revolver Amount until such time as Excess Availability is equal to or greater than 15% of the Maximum Revolver Amount for a period of 60 consecutive days. At all other times such collateral reporting shall be required monthly, except that, at all times during the period from and including the Closing Date through December 31, 2015, delivery of such collateral reporting shall be required weekly.

Monthly (no later than the 10th day of each month)	(g) a detailed aging, by total, of Borrower's Accounts, together with a reconciliation and supporting documentation for any reconciling items noted (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting), (h) a detailed calculation of those Accounts that are not eligible for the Borrowing Base, if Borrower has not implemented electronic reporting, (i) a detailed Inventory system/perpetual report together with a reconciliation to Borrower's general ledger accounts (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting), (j) a detailed calculation of Inventory categories that are not eligible for the Borrowing Base, if Borrower has not implemented electronic reporting, (k) a summary aging, by vendor, of Borrower's and its Subsidiaries' accounts payable and any book overdraft (delivered electronically in an acceptable format, if Borrower has implemented electronic reporting) and an aging, by vendor, of any held checks, (l) a detailed report regarding Borrower's and its Subsidiaries' cash and Cash Equivalents, including an indication of which amounts constitute Qualified Cash, and (m) a monthly Account roll-forward, in a format acceptable to Agent in its discretion, tied to the beginning and ending account receivable balances of Borrower's general ledger.
Monthly (no later than the 30th day of each month)	(n) a reconciliation of Accounts, trade accounts payable, and Inventory of Borrower's general ledger accounts to its monthly financial statements including any book reserves related to each category.
Quarterly (and at such other times as Agent shall request)	(o) a report regarding Borrower's and its Subsidiaries' accrued, but unpaid, *ad valorem* taxes.
Annually	(p) a detailed list of Borrower's and its Subsidiaries' customers, with address and contact information.
Upon request by Agent	(q) copies of purchase orders and invoices for Inventory and Equipment acquired by Borrower or its Subsidiaries, and (r) such other reports as to the Collateral or the financial condition of Borrower and its Subsidiaries, as Agent may reasonably request.

EXHIBIT 2

Exit Intercreditor Agreement

GK COMMENTS 9/10/15

INTERCREDITOR AGREEMENT

among

BOOMERANG TUBE, LLC,
as a Borrower,

CERTAIN SUBSIDIARIES OF BOOMERANG TUBE, LLC,
as Guarantors

and

WELLS FARGO CAPITAL FINANCE, LLC
as the Working Capital Agent and the Working Capital Administrative Agent

and

CORTLAND CAPITAL MARKET SERVICES, LLC
as the Term Loan Agent and the Term Loan Administrative Agent

Dated as of October ___, 2015

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THIS INTERCREDITOR AGREEMENT, dated as of October __, 2015, is entered into by and among BOOMERANG TUBE, LLC., a Delaware limited liability company (the "**Company**"), those certain Subsidiaries of the Company from time to time party to the Working Capital Credit Documents or the Term Loan Credit Documents as borrowers or guarantors (together, with the Company, the "**Grantors**"), CORTLAND CAPITAL MARKET SERVICES LLC, in its capacity as administrative agent for the Term Loan Lenders referenced below (in such capacity, together with its successors and assigns in such capacity, and as more particularly defined below, the "**Term Loan Administrative Agent**") and its capacity as collateral agent for the Term Loan Lenders referenced below (in such capacity, together with its successors and assigns in such capacity, and as more particularly defined below, the "**Term Loan Agent**"), and WELLS FARGO CAPITAL FINANCE, LLC, in its capacity as administrative agent for the Working Capital Lenders referenced below (in such capacity, together with its successors and assigns in such capacity, and as more particularly defined below, the "**Working Capital Administrative Agent**") and its capacity as collateral agent for the Working Capital Lenders referenced below (in such capacity, together with its successors and assigns in such capacity, and as more particularly defined below, the "**Working Capital Agent**").

RECITALS:

WHEREAS, certain of the Grantors, the financial institutions from time to time party thereto as lenders (collectively, the "**Term Loan Lenders**"), the Term Loan Administrative Agent and the Term Loan Agent are parties to that certain Term Credit Agreement dated as of the date hereof (as amended, restated, supplemented or modified from time to time, the "**Initial Term Loan Credit Agreement**"), pursuant to which the Term Loan Lenders shall make a term loan credit facility available to the Company secured by a first priority security interest in certain assets of the Grantors and a second priority security interest in certain other assets of the Grantors as more fully set forth herein;

WHEREAS, the Grantors, the financial institutions from time to time party thereto as lenders (collectively, the "**Working Capital Lenders**"), the Working Capital Administrative Agent and the Working Capital Agent are parties to that certain Credit Agreement, dated as of the date hereof (as amended, restated, supplemented or modified from time to time, the "**Initial Working Capital Credit Agreement**"), pursuant to which the Working Capital Lenders shall make a revolving credit facility available to the Company secured by a first priority security interest in certain assets of the Grantors, and a second priority security interest in certain other assets of the Grantors as more fully set forth herein; and,

WHEREAS, the Working Capital Agent, for and on behalf of the Working Capital Claimholders, and the Term Loan Agent, for and on behalf of the Term Loan Claimholders, desire to enter into this Agreement to (i) confirm their respective security interests and lien priorities in certain assets and properties of the Grantors, (ii) provide for the application, in accordance with such security interests, of the proceeds of such assets and properties, and (iii) address certain other matters.

NOW THEREFORE, in consideration of the foregoing and the mutual covenants herein contained and other good and valuable consideration, the existence and sufficiency of which are hereby acknowledged, the parties hereto, intending to be legally bound, hereby agree as follows:

SECTION 1. DEFINITIONS

1.1. Defined Terms. As used in the Agreement, the following terms shall have the following meanings:

"Account" has the meaning set forth in the UCC.

"Affiliate" means, with respect to a specified Person, any other Person which directly or indirectly, through one or more intermediaries, controls or is controlled by or is under common control with such Person, and without limiting the generality of the foregoing, includes (a) any Person which beneficially owns or holds ten (10%) percent or more of any class of Voting Stock of such Person or other equity interests in such Person, (b) any Person of which such Person beneficially owns or holds ten (10%) percent or more of any class of Voting Stock or in which such Person beneficially owns or holds ten (10%) percent or more of the equity interests and (c) any director or executive officer of such Person. For the purposes of this definition, the term "control" (including with correlative meanings, the terms "controlled by" and "under common control with"), as used with respect to any Person, means the possession, directly or indirectly, of the power to direct or cause the direction of the management and policies of such Person, whether through the ownership of Voting Stock, by agreement or otherwise.

"Agent" means the Working Capital Agent or the Term Loan Agent, as applicable.

"Agreement" means this Agreement, as amended, renewed, extended, supplemented or otherwise modified from time to time in accordance with the terms hereof.

"Bank Products Agreement" means (x) any agreement pursuant to which a bank or other financial institution agrees to provide any of the following products, services or facilities extended to any Grantor by any Claimholder or any of its Affiliates: (a) Cash Management Services; (b) commercial credit card and merchant card services; and (c) other banking products or services as may be requested by any Grantor, other than letters of credit, and (y) any interest rate, foreign currency, commodity or equity swap, collar, cap, floor or forward rate agreement, or other agreement or arrangement designed to protect against fluctuations in interest rates or currency, commodity or equity values (including, without limitation, any option with respect to any of the foregoing and any combination of the foregoing agreements or arrangements), entered into between any Grantor and any Claimholder or any of its Affiliates, and any confirmation executed in connection with any such agreement or arrangement.

"Bank Product Debt" of any Person means any obligation of such Person pursuant to any Bank Products Agreement.

"Bankruptcy Code" means the Bankruptcy Code in Title 11 of the United States Code, as amended, modified, succeeded or replaced from time to time.

"Bankruptcy Law" means the Bankruptcy Code, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief Laws of the United States or other applicable jurisdictions from time to time in effect and affecting the rights of creditors generally.

"Business Day" means any day other than a Saturday, Sunday, or other day on which commercial banks are authorized or required to close under the laws of the State of New York.

"Capital Lease" means, as applied to any Person, any lease of (or any agreement conveying the right to use) any property (whether real, personal or mixed) by such Person as lessee which in accordance with GAAP, is required to be reflected as a liability on the balance sheet of such Person.

"Capital Stock" means, with respect to any Person, any and all shares, interests, participations or other equivalents (however designated) of such Person's capital stock or partnership, limited liability company or other equity interests at any time outstanding, and any and all rights, warrants or options exchangeable for or convertible into such capital stock or other interests (but excluding any debt security that is exchangeable for or convertible into such capital stock).

"Cash Management Services" means any services provided from time to time to the Grantors in connection with operating, collections, payroll, trust, or other depository or disbursement accounts or otherwise consisting of treasury or cash management services, including automated clearinghouse, controlled disbursement, depository, electronic funds transfer, information reporting, lockbox, stop payment, return item, netting, overdraft and/or wire transfer services.

"Certificated Security" has the meaning set forth in the UCC.

"Chattel Paper" has the meaning set forth in the UCC.

"Claimholders" means, collectively, the Term Loan Claimholders and the Working Capital Claimholders.

"Collateral" means all of the assets and property of any Grantor, whether tangible or intangible, constituting either Working Capital Priority Collateral or Term Loan Priority Collateral.

"Commercial Tort Claim" has the meaning set forth in the UCC.

"Company" has the meaning set forth in the introductory paragraph of this Agreement.

"Credit Agreement" means the Term Loan Credit Agreement or the Working Capital Credit Agreement, as applicable.

"Credit Documents" means the Term Loan Credit Documents and the Working Capital Credit Documents, as applicable.

"Customer Contracts" means all contracts for the provision of goods or services by any Grantor to any Person or by any Person to any Grantor.

"Deposit Accounts" has the meaning set forth in the UCC.

"DIP Financing" has the meaning set forth in Section 6.1.

"Discharge of Obligations" means a Discharge of Term Loan Obligations or a Discharge of Working Capital Obligations.

"Discharge of Term Loan Obligations" means (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in whole or in part in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Term Loan Credit Documents and termination of all commitments to lend or otherwise extend credit (if any) under the Term Loan Credit Documents, other than pursuant to any Refinancing under a Term Loan Credit Agreement designated as a Term Loan Credit Agreement by the Company, and (ii) payment in full in cash of all other Term Loan Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in such Insolvency or Liquidation Proceeding), (iii) the payment in full in cash of cash collateral, or at Term Loan Agent's option, the delivery to Term Loan Agent of a letter of credit payable to Term Loan Agent, in either case in accordance with the terms of the Term Loan Credit Documents in respect of continuing obligations of Term Loan Agent and Term Loan Lenders under control agreements and other contingent Term Loan Obligations for which a claim or demand for payment has been made at such time (including attorneys' fees and legal expenses) to any Term Loan Claimholders for which such Term Loan Claimholder is entitled to indemnification by any Grantor, and (iv) termination or cash collateralization (in an amount reasonably satisfactory to the Term Loan Administrative Agent) of any Bank Products Agreement (to the extent obligations under such Bank Products Agreement constitute Term Loan Obligations) and the payment in full in cash of all Bank Product Debt (to the extent such Bank Product Debt constitutes Term Loan Obligations).

"Discharge of Working Capital Obligations" means (i) payment in full in cash of the principal of and interest (including interest accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such interest is, or would be, allowed in whole or in part in such Insolvency or Liquidation Proceeding) and premium, if any, on all Indebtedness outstanding under the Working Capital Credit Documents and termination of all commitments to lend or otherwise extend credit under the Working Capital Credit

Documents, other than pursuant to any Refinancing under a Working Capital Credit Agreement designated as a Working Capital Credit Agreement by the Company, (ii) payment in full in cash of all other Working Capital Obligations that are due and payable or otherwise accrued and owing at or prior to the time such principal and interest are paid (including legal fees and other expenses, costs or charges accruing on or after the commencement of any Insolvency or Liquidation Proceeding, whether or not a claim for such fees, expenses, costs or charges is, or would be, allowed in whole or in part in such Insolvency or Liquidation Proceeding), (iii) the payment in full in cash of cash collateral, or at Working Capital Agent's option, the delivery to Working Capital Agent of a letter of credit payable to Working Capital Agent, in either case in accordance with the terms of the Working Capital Credit Documents in respect of (A) letters of credit, banker's acceptances or similar instruments issued under the Working Capital Credit Documents (in an amount equal to one hundred five (105%) percent of the amount of such letters of credit, banker's acceptance or similar instruments) and (B) continuing obligations of Working Capital Agent and Working Capital Lenders under control agreements and other contingent Working Capital Obligations for which a claim or demand for payment has been made at such time (including attorneys' fees and legal expenses) to any Working Capital Claimholders for which such Working Capital Claimholder is entitled to indemnification by any Grantor, (iv) termination or cash collateralization (in an amount reasonably satisfactory to the Working Capital Administrative Agent) of any Bank Products Agreement (to the extent that the obligations under such Bank Products Agreement constitutes Working Capital Obligations) and the payment in full in cash of all Bank Product Debt (to the extent such Bank Product Debt constitutes Working Capital Obligations).

"Documents" has the meaning set forth in the UCC.

"Domestic Subsidiaries" shall mean, with respect to any Person, any Subsidiary of such Person which is incorporated or organized under the laws of any state of the United States or the District of Columbia.

"Equipment" has the meaning set forth in the UCC, including all machinery, apparatus, equipment, fittings, furniture, fixtures, motor vehicles and other tangible personal property (other than Inventory), and all parts, accessories and special tools therefor, and accessions thereto.

"Financial Asset" has the meaning set forth in the UCC.

"Fixture" has the meaning set forth in the UCC.

"GAAP" means generally accepted accounting principles in the United States set forth in the opinions and pronouncements of the Accounting Principles Board and the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or such other principles as may be approved by a significant segment of the accounting profession in the United States, that are applicable to the circumstances as of the date of determination, consistently applied.

"General Intangible" has the meaning set forth in the UCC.

"Goods" has the meaning set forth in the UCC.

"Grantors" has the meaning set forth in the introductory paragraph of this Agreement.

"Indebtedness" means, with respect to any Person, any liability, whether or not contingent, (a) in respect of borrowed money (whether or not the recourse of the lender is to the whole of the assets of such Person or only to a portion thereof) or evidenced by bonds, notes, debentures or similar instruments; (b) representing the balance deferred and unpaid of the purchase price of any property or services (other than an account payable to a trade creditor (whether or not an Affiliate) incurred in the ordinary course of business of such Person); (c) all obligations as lessee under leases which have been, or should be, in accordance with GAAP recorded as Capital Leases; (d) any contractual obligation, contingent or otherwise, of such Person to pay or be liable for the payment of any indebtedness described in this definition of another Person, including, without limitation, any such indebtedness, directly or indirectly guaranteed, or any agreement to purchase, repurchase, or otherwise acquire such indebtedness, obligation or liability or any security therefor, or to provide funds for the payment or discharge thereof, or to maintain solvency, assets, level of income, or other financial condition; (e) all obligations with respect to redeemable stock and redemption or repurchase obligations under any Capital Stock or other equity securities issued by such Person; (f) all reimbursement obligations and other liabilities of such Person with respect to surety bonds (whether bid, performance or otherwise), letters of credit, banker's acceptances, drafts or similar documents or instruments issued for such Person's account; (g) all indebtedness of such Person in respect of indebtedness of another Person for borrowed money or indebtedness of another Person otherwise described in this definition which is secured by any consensual lien, security interest, collateral assignment, conditional sale, mortgage, deed of trust, or other encumbrance on any asset of such Person, whether or not such obligations, liabilities or indebtedness are assumed by or are a personal liability of such Person, all as of such time; (h) all obligations, liabilities and indebtedness of such Person (marked to market) arising under swap agreements, cap agreements and collar agreements and other agreements or arrangements designed to protect such person against fluctuations in interest rates or currency or commodity values; (i) all obligations owed by such Person under license agreements with respect to non-refundable, advance or minimum guarantee royalty payments; (j) indebtedness of any partnership or joint venture in which such Person is a general partner or a joint venturer to the extent such Person is liable therefor as a result of such Person's ownership interest in such entity, except to the extent that the terms of such indebtedness expressly provide that such Person is not liable therefor or such Person has no liability therefor as a matter of law and (k) the principal and interest portions of all rental obligations of such Person under any synthetic lease or similar off-balance sheet financing where such transaction is considered to be borrowed money for tax purposes but is classified as an operating lease in accordance with GAAP.

"Initial Working Capital Credit Agreement" has the meaning set forth in the recitals hereto.

"Initial Term Loan Credit Agreement" has the meaning set forth in the recitals hereto.

"Insolvency or Liquidation Proceeding" means any case or proceeding commenced by or against a Person under any state, federal or foreign law for, or any agreement

of such Person to, (a) the entry of an order for relief under the Bankruptcy Code, or any other Bankruptcy Law or insolvency, debtor relief or debt adjustment law; (b) the appointment of a receiver, trustee, liquidator, administrator, conservator or other custodian for such Person or any part of its Property; or (c) an assignment or trust mortgage for the benefit of creditors.

"Instrument" has the meaning set forth in the UCC.

"Intellectual Property" means with respect to any Grantor, the collective reference to such Grantor's United States copyrights, copyright licenses, patents, patent licenses, trade secrets, trade secret licenses, trademarks and trademark licenses.

"Investment Property" has the meaning set forth in the UCC.

"Inventory" has the meaning set forth in the UCC, including all goods intended for sale, lease, display or demonstration; all work in process; and all raw materials, and other materials and supplies of any kind that are or could be used in connection with the manufacture, printing, packing, shipping, advertising, sale, lease or furnishing of such goods, or otherwise used or consumed in any Grantor's business (but excluding Equipment).

"Letter of Credit Rights" has the meaning set forth in the UCC.

"Lien" means any mortgage, pledge, hypothecation, assignment, deposit arrangement, encumbrance, lien (statutory or other), charge, or preference, priority or other security interest or preferential arrangement in the nature of a security interest of any kind or nature whatsoever (including any conditional sale or other title retention agreement, any easement, right of way or other encumbrance on title to real property, and any financing lease having substantially the same economic effect as any of the foregoing).

"Limited License" has the meaning set forth in Section 5.5.

"Non-Priority Agent" means, with respect to the Working Capital Priority Collateral, the Term Loan Agent and, with respect to the Term Loan Priority Collateral, the Working Capital Agent, as applicable.

"Non-Priority Claimholders" means, with respect to the Working Capital Priority Collateral, the Term Loan Claimholders and, with respect to the Term Loan Priority Collateral, the Working Capital Claimholders, as applicable.

"Obligations" means Term Loan Obligations or the Working Capital Obligations, as applicable.

"Ordinary Course of Business" means the ordinary course of business of the Company or Subsidiaries, consistent with past practices and undertaken in good faith (and not for the purpose of evading any provision of a Credit Document).

"Payment Intangibles" has the meaning set forth in the UCC.

"Person" means any individual, sole proprietorship, partnership, corporation (including any corporation which elects subchapter S status under the Internal Revenue Code of 1986), limited liability company, limited liability partnership, business trust, unincorporated association, joint stock corporation, trust, joint venture or other entity or any government or any agency or instrumentality or political subdivision thereof.

"Priority Agent" means, with respect to the Working Capital Priority Collateral, the Working Capital Agent, and, with respect to the Term Loan Priority Collateral, the Term Loan Agent, as applicable.

"Priority Claimholders" means, with respect to the Working Capital Priority Collateral, the Working Capital Claimholders, and, with respect to the Term Loan Priority Collateral, the Term Loan Claimholders, as applicable.

"Priority Collateral" means, with respect to the Working Capital Agent and the other Working Capital Claimholders, the Working Capital Priority Collateral, and, with respect to the Term Loan Agent and the other Term Loan Claimholders, the Term Loan Priority Collateral, as applicable.

"Proceeds" has the meaning set forth in the UCC.

"Property" means any interest in any kind of property or asset, whether real, personal or mixed, or tangible or intangible.

"Recovery" has the meaning set forth in Section 6.7.

"Refinance" means, in respect of any Indebtedness, to refinance, refund, renew, restructure, replace or repay, or to issue other Indebtedness, in exchange or replacement for, such Indebtedness (whether such refinancing, refunding, renewal, restructuring, replacement or repayment or issuance occurs concurrently with the repayment of such Indebtedness or after any lapse of time during which there may not exist any such Indebtedness). "Refinanced" and "Refinancing" shall have correlative meanings.

"Subsidiary" means, with respect to any Person, any corporation, limited liability company, limited liability partnership or other limited or general partnership, trust, association or other business entity of which an aggregate of at least a majority of the outstanding Capital Stock or other interests entitled to vote in the election of the board of directors of such corporation (irrespective of whether, at the time, Capital Stock of any other class or classes of such corporation shall have or might have voting power by reason of the happening of any contingency), managers, trustees or other controlling persons, or an equivalent controlling interest therein, of such Person is, at the time, directly or indirectly, owned by such Person and/or one or more subsidiaries of such Person.

"Supporting Obligations" has the meaning set forth in the UCC.

"Term Loan Administrative Agent" has the meaning set forth in the introductory paragraph of this Agreement and includes any replacement or successor agent whether under the Initial Term Loan Credit Agreement or any subsequent Term Loan Credit Agreement.

"Term Loan Agent" has the meaning set forth in the introductory paragraph of this Agreement and includes any replacement or successor agent whether under the Initial Term Loan Credit Agreement or any subsequent Term Loan Credit Agreement.

"Term Loan Bank Products Provider" means any Person (other than a Term Loan Lender or an Affiliate of a Term Loan Lender) that has entered into a Bank Products Agreement with a Grantor with the obligations of such Grantor thereunder being secured by one or more Term Loan Collateral Documents, as designated by the Company in accordance with the terms of the Term Loan Collateral Documents.

"Term Loan Claimholders" means, at any relevant time, the holders of Term Loan Obligations at such time, including without limitation the Term Loan Lenders, any agent under the Term Loan Credit Agreement and any Term Loan Bank Products Provider.

"Term Loan Collateral Documents" means the Security Documents (as defined in the Term Loan Credit Agreement as amended from time to time) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Term Loan Obligations or under which rights or remedies with respect to such Liens are governed.

"Term Loan Collateral Exercise of Remedies" has the meaning set forth in Section 5.1(a)(i).

"Term Loan Credit Agreement" means (i) the Initial Term Loan Credit Agreement and (ii) if designated by the Company, any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein), or Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Initial Term Loan Credit Agreement or (y) any subsequent Term Loan Credit Agreement (as amended, restated, supplemented or modified from time to time); provided, that the lenders party to such Term Loan Credit Agreement shall agree, by a customary joinder in form and substance reasonably satisfactory to the Working Capital Agent, that the obligations under such Term Loan Credit Agreement are subject to the terms and provisions of this Agreement. Any reference to the Term Loan Credit Agreement hereunder shall be deemed a reference to any Term Loan Credit Agreement then in existence.

"Term Loan Credit Documents" means the Term Loan Credit Agreement, the Term Loan Collateral Documents, the other Loan Documents (as defined in the Term Loan Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Term Loan Obligation, and any other document or instrument executed or delivered at any time in connection with any Term Loan Obligations, including any intercreditor or joinder agreement among holders of Term Loan Obligations or among holders of Term Loan Obligations, to the extent such are effective at the relevant time, as each may be amended, modified or supplemented from time to time.

"Term Loan Lenders" means any "Lender", as defined in the Term Loan Credit Agreement, and including, in the case of Bank Products Agreements, Affiliates of Term Loan Lenders who are parties to Bank Products Agreements with any Grantor.

"Term Loan Obligations" means any and all loans and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor whether now existing or hereafter arising, whether arising before, during or after the commencement of any case with respect to any Grantor under the Bankruptcy Code or any other Insolvency or Liquidation Proceeding under (i) the Term Loan Credit Agreement, (ii) the other Term Loan Credit Documents and (iii) any Bank Products Agreement entered into with any Person who at the time of entry into such agreement is either the Term Loan Agent, the Term Loan Administrative Agent, any Term Loan Lender, any Affiliate of a Term Loan Lender or any Term Loan Bank Products Provider. "Term Loan Obligations" shall include (x) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant Term Loan Credit Document and (y) all fees, costs and charges incurred in connection with the Term Loan Credit Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of an Insolvency or Liquidation Proceeding and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Term Loan Priority Collateral" means all of the present and future assets and Property of the Company and any other Grantor, whether real, personal or mixed, with respect to which a Lien is granted as security for any Term Loan Obligations, that do not constitute Working Capital Priority Collateral, including, without limitation:

(a) all of the Capital Stock of the Company and each of the present and future, direct or indirect, Subsidiaries of the Company;

(b) all of the following present and future Property of the Company and each other Grantor:

(i) all patents and patent license rights, trademarks and trademark license rights, copyrights and copyright license rights, trade secrets and processes and other Intellectual Property;

(ii) all Equipment, owned real Property, Fixtures, Investment Property and Commercial Tort Claims, except to the extent such items constitute Working Capital Priority Collateral;

(iii) the TL Deposit Account (to the extent any Grantor has rights therein) and all cash from time to time on deposit in the TL Deposit Account (to the extent any Grantor has rights therein), except to the extent such cash constitutes identifiable Proceeds of Working Capital Priority Collateral;

(iv) Chattel Paper, Documents, Instruments and Letter of Credit Rights, except to the extent such items constitute Working Capital Priority Collateral; and

(v) General Intangibles, Supporting Obligations and other contract rights, including any indemnification rights, except to the extent such items constitute Working Capital Priority Collateral;

(c) all claims under policies of casualty insurance and all proceeds of casualty insurance, in each case, payable by reason of loss or damage to any, Equipment or other Term Loan Priority Collateral;

(d) all books and records relating primarily to the foregoing; and

(e) all Proceeds (including, without limitation, insurance proceeds) and products of the Property and assets described in the foregoing clauses (a) and (b).

"TL Deposit Account" means that certain Deposit Account numbered **[_____],** at **[_____],** together with any replacement account (designated in advance in writing by Term Loan Agent to Working Capital Agent) created to hold the proceeds of Term Loan Priority Collateral and proceeds of Term Loan Obligations.

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

"Voting Stock" means, with respect to any Person, (a) one (1) or more classes of Capital Stock of such Person having general voting powers to elect at least a majority of the board of directors, managers or trustees of such Person, irrespective of whether at the time Capital Stock of any other class or classes have or might have voting power by reason of the happening of any contingency, and (b) any Capital Stock of such Person convertible or exchangeable without restriction at the option of the holder thereof into Capital Stock of such Person described in clause (a) of this definition.

"Working Capital Administrative Agent" has the meaning set forth in the introductory paragraph of this Agreement and includes any replacement or successor agent whether under the Initial Working Capital Credit Agreement or any subsequent Working Capital Credit Agreement.

"Working Capital Agent" has the meaning set forth in the introductory paragraph of this Agreement and includes any replacement or successor agent whether under the Initial Working Capital Credit Agreement or any subsequent Working Capital Credit Agreement.

"Working Capital Claimholders" means, at any relevant time, the holders of Working Capital Obligations at such time, including without limitation the Working Capital Lenders and any agent under the Working Capital Credit Agreement, and including, in the case of Bank Products Agreements, Affiliates of Working Capital Lenders who are parties to Bank Products Agreements with any Grantor.

"Working Capital Collateral Documents" means the Security Documents (as defined in the Working Capital Credit Agreement as amended from time to time) and any other agreement, document or instrument pursuant to which a Lien is granted securing any Working Capital Obligations or under which rights or remedies with respect to such Liens are governed.

"Working Capital Credit Agreement" means (i) the Initial Working Capital Credit Agreement and (ii) if designated by the Company, any other credit agreement, loan agreement, note agreement, promissory note, indenture or other agreement or instrument evidencing or governing the terms of any indebtedness or other financial accommodation that has been incurred to extend, increase (subject to the limitations set forth herein), or Refinance in whole or in part the indebtedness and other obligations outstanding under the (x) Initial Working Capital Credit Agreement or (y) any subsequent Working Capital Credit Agreement (as amended, restated, supplemented or modified from time to time); provided, that the lenders party to such Working Capital Credit Agreement shall agree, by a customary joinder in form and substance reasonably satisfactory to the Term Loan Agent, that the obligations under such Working Capital Credit Agreement are subject to the terms and provisions of this Agreement. Any reference to the Working Capital Credit Agreement hereunder shall be deemed a reference to any Working Capital Credit Agreement then in existence.

"Working Capital Credit Documents" means the Working Capital Credit Agreement, the Working Capital Collateral Documents, the other Loan Documents (as defined in the Working Capital Credit Agreement) and each of the other agreements, documents and instruments providing for or evidencing any other Working Capital Obligation, and any other document or instrument executed or delivered at any time in connection with any Working Capital Obligations, including any intercreditor or joinder agreement among holders of Working Capital Obligations, to the extent such are effective at the relevant time, as each may be amended, modified or supplemented from time to time.

"Working Capital General Intangibles" means all General Intangibles of a Grantor (other than Intellectual Property) to the extent arising from, relating to or constituting Proceeds of Working Capital Priority Collateral, including, without limitation, (i) payment intangibles, (ii) all interest, fees, late charges, penalties, collection fees and other amounts due or to become due or otherwise payable in connection with (and solely to that extent) any Working Capital Priority Collateral, (iii) choses in action, causes of action, or other rights and claims against carriers, shippers, processors, warehousemen, bailees, custom brokers, freight forwarders, or other third parties at any time in possession of, or using, any of the other Working Capital Priority Collateral or any sellers of any other Working Capital Priority Collateral, (iv) rights of stoppage in transit, replevin, repossession, reclamation and other rights and remedies of an unpaid vendor, lienor or secured party, (v) agreements or arrangements with sales agents, distributors or the like and/or consignees, warehousemen or other third persons in possession of Inventory, (vi) guaranty or warranty claims with respect to Accounts or Inventory, (vii) rights to indemnification and proceeds thereof, (viii) commercial tort claims and (ix) any deposits by and property of account debtors or other persons securing the obligations of account debtors in respect of Accounts and other Working Capital Priority Collateral.

"Working Capital Lenders" means any "Lender" as such term is defined in the Working Capital Credit Agreement.

"Working Capital Obligations" means any and all loans, letter of credit obligations and all other obligations, liabilities and indebtedness of every kind, nature and description owing by any Grantor whether now existing or hereafter arising, whether arising before, during or after the commencement of any case with respect to any Grantor under the

Bankruptcy Code or any other Insolvency or Liquidation Proceeding under (i) the Working Capital Credit Agreement, (ii) the other Working Capital Credit Documents and (iii) any Bank Products Agreement entered into with any Person who at the time of entry into such agreement is either the Working Capital Agent, the Working Capital Administrative Agent, the Working Capital Lenders or any Affiliate of the Working Capital Lenders. "Working Capital Obligations" shall include (x) all interest accrued or accruing (or which would, absent commencement of an Insolvency or Liquidation Proceeding, accrue) in accordance with the rate specified in the relevant Working Capital Credit Document and (y) all fees, costs and charges incurred in connection with the Working Capital Credit Documents and provided for thereunder, in the case of each of clause (x) and clause (y) whether before or after commencement of an Insolvency or Liquidation Proceeding and irrespective of whether any claim for such interest, fees, costs or charges is allowed as a claim in such Insolvency or Liquidation Proceeding.

"Working Capital Priority Collateral" means all of the following present and future assets and Property of the Company and any other Grantor with respect to which a Lien is granted as security for any Working Capital Obligations:

(a) (i) Accounts and Payment Intangibles (other than Accounts and Payment Intangibles constituting identifiable Proceeds of Term Loan Priority Collateral);

(ii) Inventory;

(iii) Chattel Paper, Instruments, Documents, in each case only to the extent relating to Working Capital Priority Collateral, Inventory or other specifically enumerated types of Working Capital Priority Collateral (in each case other than identifiable Proceeds of Term Loan Priority Collateral);

(iv) Working Capital General Intangibles;

(v) Deposit Accounts (other than the TL Deposit Account);

(vi) cash, cash equivalents and investment property (other than the TL Deposit Account, the Capital Stock of the Company and the present and future, direct or indirect, Subsidiaries of the Company or the identifiable Proceeds of the Term Loan Priority Collateral), including, without limitation, all monies, deposits and balances held in or for deposit in or otherwise attributable to any lockboxes or deposit accounts established or used by any Grantor in connection with the financing arrangements with Working Capital Agent and Working Capital Lenders for the handling of collections of any of the Accounts or any of the other Working Capital Priority Collateral of any Grantor, or any other deposit account, investment account or other account at any depository or other institution and including any investment property (including securities, whether certificated or uncertificated, securities accounts, security entitlements, commodity contracts or commodity accounts), other than the TL Deposit Account, identifiable Proceeds of Term Loan Priority Collateral held in the TL Deposit Account or the stock of subsidiaries of a Grantor;

(vii) Letter of Credit Rights and Supporting Obligations in respect of Inventory, Accounts (other than Accounts or other payment obligations constituting the identifiable Proceeds of Term Loan Priority Collateral) or other specifically enumerated types of Working Capital Priority Collateral;

(viii) all contracts, documents of title, and other documents that evidence the ownership of, right to receive or possess, or that otherwise relate to, any Accounts, other Working Capital General Intangibles, Inventory, including contracts, documents of title, and other documents that relate to the acquisition of, or sale or other disposition of, any inventory, and all contracts, documents of title, or other documents that arise from or constitute Proceeds of Working Capital Priority Collateral;

(ix) all claims under policies of casualty insurance and all proceeds of casualty insurance, in each case, payable by reason of loss or damage to any, Accounts, Inventory or other Working Capital Priority Collateral and all claims and proceeds under policies of business interruption insurance;

(x) books and records and accounting systems relating primarily to Accounts, Inventory or other specifically enumerated types of Working Capital Priority Collateral including, without limitation, invoices, purchase order, ledger cards, shipping evidence, statements, correspondence, memoranda, customer lists, credit files and other data, in each case relating to any of the other Working Capital Priority Collateral or any account debtor, together with the tapes, software, disks, diskettes and other data and media storage devices;

(xi) Customer Contracts;

(xii) tax refunds;

(xiii) any Bank Products Agreements consisting of hedge agreements; and

(b) all Proceeds (including, without limitation, insurance proceeds) and products of the Property described in the foregoing clause (a).

For purposes of clarification, and notwithstanding anything to the contrary set forth in this Agreement, any of the items set forth in this definition of Working Capital Priority Collateral that are or become branded, or produced through the use or other application of, any Intellectual Property, whether pursuant to the exercise of rights pursuant to Section 5.5 or otherwise, shall constitute Working Capital Priority Collateral, and no Proceeds arising from any disposition of any such Working Capital Priority Collateral shall be, or be deemed to be, attributable to Term Loan Priority Collateral.

"Working Capital Priority Collateral Disposition" has the meaning set forth in Section 5.1(d)(ii).

"Working Capital Priority Collateral Exercise of Remedies" has the meaning set forth in Section 5.1(d)(i).

1.2. Terms Generally. The definitions of terms herein shall apply equally to the singular and plural forms of the terms defined. Whenever the context may require, any pronoun shall include the corresponding masculine, feminine and neuter forms. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation." The word "will" shall be construed to have the same meaning and effect as the word "shall". Unless the context requires otherwise (i) any definition of or reference to any agreement, instrument or other document herein shall be construed as referring to such agreement, instrument or other document as from time to time amended, supplemented or otherwise modified, (ii) any reference herein to any Person shall be construed to include such Person's successors and assigns, (iii) 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, (iv) all references herein to Exhibits or Sections shall be construed to refer to Exhibits or Sections of this Agreement and (v) the words "asset" and "property" shall be construed to have the same meaning and effect and to refer to any and all tangible and intangible assets and properties, including cash, securities, accounts and contract rights.

SECTION 2. LIENS

2.1. Scope of Collateral. The Working Capital Agent, for and on behalf of the Working Capital Claimholders, hereby acknowledges that the Term Loan Agent, for and on behalf of the Term Loan Claimholders, has been granted Liens upon all of the Collateral pursuant to the Term Loan Credit Documents to secure the Term Loan Obligations. The Term Loan Agent, for and on behalf of the Term Loan Claimholders, hereby acknowledges that the Working Capital Agent, for and on behalf of the Working Capital Claimholders, has been granted Liens upon all of the Collateral pursuant to the Working Capital Credit Documents to secure the Working Capital Obligations.

2.2. Priority.

(a) Notwithstanding the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a Lien in favor of any Claimholder in any Working Capital Priority Collateral, and notwithstanding any conflicting terms or conditions which may be contained in any of the Credit Documents, the Liens upon the Working Capital Priority Collateral securing the Working Capital Obligations shall have priority over the Liens upon the Working Capital Priority Collateral securing the Term Loan Obligations, and such Liens upon the Working Capital Priority Collateral securing the Term Loan Obligations are and shall be junior and subordinate to the Liens upon the Working Capital Priority Collateral securing the Working Capital Obligations in all respects.

(b) Notwithstanding the order or time of attachment, or the order, time or manner of perfection, or the order or time of filing or recordation of any document or instrument, or other method of perfecting a Lien in favor of any Claimholder in any Term Loan Priority Collateral, and notwithstanding any conflicting terms or conditions which may be

contained in any of the Credit Documents, the Liens upon the Term Loan Priority Collateral securing the Term Loan Obligations shall have priority over the Liens upon the Term Loan Priority Collateral securing the Working Capital Obligations, and such Liens upon the Term Loan Priority Collateral securing the Working Capital Obligations are and shall be junior and subordinate to the Liens upon the Term Loan Priority Collateral securing the Term Loan Obligations in all respects.

2.3. Failure to Perfect**.** Notwithstanding any failure of any Claimholder to perfect its security interest in its respective Priority Collateral, the subordination of its Lien on such Priority Collateral to any Lien securing any other obligation of any Grantor, or the avoidance, invalidation or lapse of its Lien on such Priority Collateral:

(a) the Liens upon the Working Capital Priority Collateral securing the Working Capital Obligations shall be and remain senior in all respects and prior to the Liens on the Working Capital Priority Collateral securing the Term Loan Obligations; and

(b) the Liens on the Term Loan Priority Collateral securing the Term Loan Obligations shall be and remain senior in all respects and prior to the Liens on the Term Loan Priority Collateral securing the Working Capital Obligations.

2.4. Prohibition on Contesting Liens. Each of the Working Capital Agent, for itself and on behalf of each Working Capital Claimholder, and the Term Loan Agent, for itself and on behalf of each Term Loan Claimholder, agrees that it shall not (and hereby waives any right to) contest or support any other Person in contesting, in any proceeding (including any Insolvency or Liquidation Proceeding), the priority, validity or enforceability of a Lien held by or on behalf of any of the Term Loan Claimholders in any Collateral, or by or on behalf of any of the Working Capital Claimholders in any Collateral; provided that nothing in this Agreement shall be construed to prevent or impair the rights of any such party to enforce this Agreement, including without limitation the priority of the Lien held by it or for its benefit on its respective Priority Collateral as provided herein.

2.5. New Liens.

(a) Until the Discharge of Term Loan Obligations shall have occurred, if any Working Capital Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Grantor or any of its Domestic Subsidiaries to secure the Working Capital Obligations, which assets are not also subject to a Lien in favor of the Term Loan Agent to secure the Term Loan Obligations, then such Working Capital Claimholder shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Working Capital Credit Document also hold and be deemed to have held such Lien and security interest for the benefit of the Term Loan Agent as security for the Term Loan Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Section 4, as applicable.

(b) Until the Discharge of Working Capital Obligations shall have occurred, if any Term Loan Claimholder shall (nonetheless and in breach hereof) acquire any Lien on any assets of any Grantor or any of its Subsidiaries to secure any Term Loan Obligations, which

assets are not also subject to a Lien in favor of the Working Capital Agent to secure the Working Capital Obligations, then such Term Loan Claimholder, shall, without the need for any further consent of any other Person and notwithstanding anything to the contrary in any Term Loan Credit Document also hold and be deemed to have held such Lien and security interest for the benefit of the Working Capital Agent as security for the Working Capital Obligations subject to the priorities set forth herein, with any amounts received in respect thereof subject to distribution and turnover under Section 4, as applicable.

2.6. Similar Liens and Agreements. The Working Capital Agent and Term Loan Agent agree that it is their intention that the Collateral in which they have an interest be identical. In furtherance of the foregoing and of Section 8.9, the parties hereto agree, subject to the other provisions of this Agreement, upon request by the Working Capital Agent or the Term Loan Agent, to cooperate in good faith (and to direct their counsel to cooperate in good faith) from time to time in order to determine the specific items included in the Collateral and the steps taken to perfect their respective Liens thereon and the identity of the respective parties obligated under the Working Capital Credit Documents and the Term Loan Credit Documents.

SECTION 3. ENFORCEMENT

3.1. Enforcement.

(a) So long as the Discharge of Working Capital Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against the Company or any other Grantor:

(i) the Term Loan Agent and the Term Loan Claimholders:

(A) will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Working Capital Priority Collateral or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to the Working Capital Priority Collateral,

(B) will not contest, protest or object to any foreclosure proceeding or action brought by the Working Capital Agent or any Working Claimholder with respect to the Working Capital Priority Collateral, or any other exercise by the Working Capital Agent or any other Working Capital Claimholder, of any rights and remedies relating to the Working Capital Priority Collateral under the Working Capital Credit Documents or otherwise; provided that the respective interests of the Term Loan Claimholders attach to the proceeds thereof, subject to the relative priorities described in Section 2 and Section 4, and

(C) will not object to the forbearance by the Working Capital Agent or the other Working Capital Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Working Capital Priority Collateral; and

(ii) the Working Capital Agent and the other Working Capital Claimholders shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Working Capital Priority Collateral without any consultation with or the consent of the Term Loan Agent or any other Term Loan Claimholder; provided, that

(A) Term Loan Agent or any other Term Loan Claimholder may, with ten (10) days prior written notice to Working Capital Agent, commence or join with any Person in commencing or filing a petition for an Insolvency or Liquidation Proceeding,

(B) in any Insolvency or Liquidation Proceeding commenced by or against Company or any other Grantor, the Term Loan Administrative Agent or the Term Loan Agent may file a claim or statement of interest with respect to the Term Loan Obligations,

(C) the Term Loan Agent may take any action (not adverse to the Liens on the Working Capital Priority Collateral securing the Working Capital Obligations, or the rights of the Working Capital Agent or the other Working Capital Claimholders to exercise remedies in respect thereof) in order to preserve or protect its Lien on the Working Capital Priority Collateral,

(D) the Term Loan Claimholders shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Term Loan Claimholders, including without limitation any claims secured by the Working Capital Priority Collateral, if any, in each case in accordance with the terms of this Agreement,

(E) in any Insolvency or Liquidation Proceeding, the Term Loan Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement (including subject to the terms of Section 5.1 and Section 6.2),

(F) in any Insolvency or Liquidation Proceeding, the Term Loan Claimholders shall be entitled to vote on any plan of reorganization, except (i) any plan of reorganization that does not provide for the Discharge of Working Capital Obligations on or before the effective date thereof, and (ii) to the extent inconsistent with the provisions hereof, and

(G) the Term Loan Agent or any Term Loan Claimholder may exercise any of its rights or remedies with respect to the Term Loan Priority Collateral consistent with the terms of this Agreement.

(b) So long as the Discharge of Term Loan Obligations has not occurred, whether or not any Insolvency or Liquidation Proceeding has been commenced by or against Company or any other Grantor:

(i) the Working Capital Agent and the Working Capital Claimholders:

(A) will not exercise or seek to exercise any rights or remedies (including any right of set-off or recoupment) with respect to any Term Loan Priority Collateral or institute or commence (or join with any other Person in commencing) any enforcement, collection, execution, levy or foreclosure action or proceeding with respect to any Term Loan Priority Collateral; and

(B) will not contest, protest or object to any foreclosure proceeding or action brought by the Term Loan Agent or any Term Loan Claimholder with respect to the Term Loan Priority Collateral, or any other exercise by the Term Loan Agent or any other Term Loan Claimholder, of any rights and remedies relating to the Term Loan Priority Collateral under the Term Loan Credit Documents or otherwise; provided that the respective interests of the Working Capital Claimholders attach to the proceeds thereof, subject to the relative priorities described in Section 2 and Section 4; and

(C) will not object to the forbearance by the Term Loan Agent or the other Term Loan Claimholders from bringing or pursuing any foreclosure proceeding or action or any other exercise of any rights or remedies relating to the Term Loan Priority Collateral; and

(ii) the Term Loan Agent shall have the exclusive right to enforce rights, exercise remedies (including set-off and the right to credit bid their debt) and make determinations regarding the release, disposition, or restrictions with respect to the Term Loan Priority Collateral without any consultation with or the consent of the Working Capital Agent or any other Working Capital Claimholder; provided, that

(A) Working Capital Agent or any other Working Capital Claimholder may, with ten (10) days prior written notice to Term Loan Agent, commence or join with any Person in commencing or filing a petition for an Insolvency or Liquidation Proceeding,

(B) in any Insolvency or Liquidation Proceeding commenced by or against Company or any other Grantor, the Working Capital Administrative Agent or the Working Capital Agent may file a claim or statement of interest with respect to the Working Capital Obligations,

(C) the Working Capital Agent may take any action (not adverse to the Liens on the Term Loan Priority Collateral securing the Term Loan Obligations, or the rights of the Term Loan Agent or the other Term Loan Claimholders to exercise remedies in respect thereof) in order to preserve or protect its Lien on the Term Loan Priority Collateral,

(D) the Working Capital Claimholders shall be entitled to file any necessary responsive or defensive pleadings in opposition to any motion, claim, adversary proceeding or other pleading made by any person objecting to or otherwise seeking the disallowance of the claims of the Working Capital Claimholders, including without limitation any claims secured by the Term Loan Priority Collateral, if any, in each case in accordance with the terms of this Agreement,

(E) in any Insolvency or Liquidation Proceeding, the Working Capital Claimholders shall be entitled to file any pleadings, objections, motions or agreements which assert rights or interests available to unsecured creditors of the Grantors arising under either Bankruptcy Law or applicable non-bankruptcy law, in each case in accordance with the terms of this Agreement (including subject to the terms of Section 5.1 and Section 6.2),

(F) in any Insolvency or Liquidation Proceeding, the Working Capital Claimholders shall be entitled to vote on any plan of reorganization, except (i) any plan of reorganization that does not provide for the Discharge of Term Loan Obligations on or before the effective date thereof, and (ii) to the extent inconsistent with the provisions hereof, and

(G) the Working Capital Agent or any Working Capital Claimholder may exercise any of its rights or remedies with respect to the Working Capital Priority Collateral consistent with the terms of this Agreement.

(c) In exercising rights and remedies with respect to the Working Capital Priority Collateral, the Working Capital Agent and the Working Capital Claimholders may enforce the provisions of the Working Capital Credit Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by the Working Capital Agent and Working Capital Claimholders to sell or otherwise dispose of the Working Capital Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction. The Working Capital Agent, on behalf of itself and the Working Capital Claimholders for which it acts as Agent, agrees that it will not take or receive any Term Loan Priority Collateral or any proceeds of Term Loan Priority Collateral in connection with the exercise of any right or remedy (including set-off or recoupment) with respect to the Working Capital Priority Collateral and that any such Collateral or proceeds thereof taken or received by it that constitutes Term Loan Priority Collateral will be paid over to the Term Loan Agent pursuant to Section 4.2.

(d) In exercising rights and remedies with respect to the Term Loan Priority Collateral, the Term Loan Agent and the Term Loan Claimholders may enforce the provisions of the Term Loan Credit Documents and exercise remedies thereunder, all in such order and in such manner as they may determine in the exercise of their sole discretion. Such exercise and enforcement shall include the rights of an agent appointed by the Term Loan Agent and Term

Loan Claimholders to sell or otherwise dispose of the Term Loan Priority Collateral upon foreclosure, to incur expenses in connection with such sale or disposition, and to exercise all the rights and remedies of a secured creditor under the UCC of any applicable jurisdiction and of a secured creditor under Bankruptcy Laws of any applicable jurisdiction. The Term Loan Agent, on behalf of itself and the Term Loan Claimholders for which it acts as Agent, agrees that it will not take or receive any Working Capital Priority Collateral or any proceeds of Working Capital Priority Collateral in connection with the exercise of any right or remedy (including set-off or recoupment) with respect to the Term Loan Priority Collateral and that any such Collateral or proceeds thereof taken or received by it that does not constitute Term Loan Priority Collateral will be paid over to the Working Capital Agent pursuant to Section 4.2.

(e) Without limiting the generality of the foregoing subsections (a)−(d), (i) unless and until the Discharge of Working Capital Obligations has occurred, (x) the sole right of the Term Loan Agent and the Term Loan Claimholders with respect to the Working Capital Priority Collateral is to hold a Lien on the Working Capital Priority Collateral pursuant to the Term Loan Credit Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of Working Capital Obligations has occurred in accordance with the terms of the Working Capital Credit Documents and applicable law, and (ii) unless and until the Discharge of Term Loan Obligations has occurred, the sole right of the Working Capital Agent and the Working Capital Claimholders with respect to the Term Loan Priority Collateral is to hold a Lien on the Term Loan Priority Collateral pursuant to the Working Capital Credit Documents for the period and to the extent granted therein and to receive a share of the proceeds thereof, if any, after the Discharge of Term Loan Obligations has occurred in accordance with the terms of the Term Loan Credit Documents and applicable law.

(f) Subject to the proviso in clause (ii) of Section 3.1(a) and Section 3.1(b), as applicable, (i) the Working Capital Agent, for itself and on behalf of the Working Capital Claimholders, (x) agrees that neither it nor the Working Capital Claimholders will take any action that would hinder, delay or impede any exercise of remedies by the Term Loan Agent and other Term Loan Claimholders under the Term Loan Credit Documents with respect to the Term Loan Priority Collateral, including any sale, lease, exchange, transfer or other disposition of the Term Loan Priority Collateral, whether by foreclosure or otherwise, and (y) hereby waives any and all rights it or the Working Capital Claimholders may have as a junior lien creditor or otherwise to object to the manner or order in which the Term Loan Agent or the other Term Loan Claimholders seek to enforce the Liens granted in the Term Loan Priority Collateral; and (ii) the Term Loan Agent, for itself and on behalf of the Term Loan Claimholders (x) agrees that neither it nor the Term Loan Claimholders will take any action that would hinder, delay or impede any exercise of remedies by the Working Capital Agent and other Working Capital Claimholders under the Working Capital Credit Documents with respect to the Working Capital Priority Collateral, including any sale, lease, exchange, transfer or other disposition of the Working Capital Priority Collateral, whether by foreclosure or otherwise, and (y) hereby waives any and all rights it or the Working Capital Claimholders may have as a junior lien creditor or otherwise to object to the manner or order in which the Working Capital Agent or the other Working Capital Claimholders seek to enforce the Liens granted in the Working Capital Priority Collateral.

3.2. Actions Upon Breach.

(a) If any Claimholder commences or participates in any action or proceeding against Company, any other Grantor or the Collateral in violation of this Agreement, any Agent for any other Claimholders may interpose in the name of such Claimholders or in the name of Company or such Grantor the making of this Agreement as a defense or dilatory plea.

(b) Should any Claimholder in any way take, or attempt or threaten to take, contrary to this Agreement, any action with respect to Collateral, or fail to take any action required by this Agreement, any Agent for any other Claimholders (in its own name or in the name of a Grantor) may obtain relief against such offending Claimholder by injunction, specific performance and/or other appropriate equitable relief, it being understood and agreed by all of the Claimholders that (i) the damages from such actions may be difficult to ascertain and may be irreparable, and (ii) the offending Claimholder waives any defense that such other Claimholders cannot demonstrate damage or be made whole by the awarding of damages.

SECTION 4. PAYMENTS

4.1. Application of Proceeds.

(a) So long as the Discharge of Term Loan Obligations has not occurred, any proceeds of Term Loan Priority Collateral received in connection with the sale or other disposition of the Term Loan Priority Collateral, or collection on the Term Loan Priority Collateral upon the exercise of remedies, shall be applied by the Term Loan Agent to the Term Loan Obligations in such order as specified in the Term Loan Credit Documents. Upon the Discharge of Term Loan Obligations, the Term Loan Agent shall deliver to the Working Capital Agent any proceeds of Term Loan Priority Collateral held by it in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Any such proceeds of Term Loan Priority Collateral so received by the Working Capital Agent upon or after the Discharge of Term Loan Obligations shall be applied by the Working Capital Agent to the Working Capital Obligations in such order as specified in the Working Capital Credit Documents and otherwise in accordance with the Working Capital Credit Documents. Any proceeds of Term Loan Priority Collateral not otherwise applied in accordance with this Section 4.1(a) shall be delivered to the relevant Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdictions may direct. The foregoing provisions of this Section 4.1(a) shall not impose on Term Loan Agent or any other Term Loan Claimholder any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(b) So long as the Discharge of Working Capital Obligations has not occurred, any proceeds of Working Capital Priority Collateral received in connection with the sale or other disposition of the Working Capital Priority Collateral, or collection on Working Capital Priority Collateral upon the exercise of remedies, shall be applied by the Working Capital Agent to the Working Capital Obligations in such order as specified in the relevant Working Capital Credit Documents. Upon the Discharge of Working Capital Obligations, the Working Capital Agent shall deliver to the Term Loan Agent any proceeds of Working Capital

Priority Collateral held by it in the same form as received, with any necessary endorsements, or as a court of competent jurisdiction may otherwise direct. Any such proceeds of Working Capital Priority Collateral so received by the Term Loan Agent upon or after the Discharge of Working Capital Obligations shall be applied by the Term Loan Agent to the Term Loan Obligations in such order as specified in the Term Loan Credit Documents and otherwise in accordance with the Term Loan Credit Documents. Any proceeds of Working Capital Priority Collateral not otherwise applied in accordance with this Section 4.1(b) shall be delivered to the relevant Grantor or to whosoever may be lawfully entitled to receive the same or as a court of competent jurisdictions may direct. The foregoing provisions of this Section 4.1(b) shall not impose on Working Capital Agent or any other Working Capital Claimholder any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(c) Except as set forth in this Section 4.1(c), nothing in this Agreement shall require any Agent or any Claimholder to determine the source of Collateral proceeds received by it and applied to its Obligations. In the absence of fraudulent conduct, willful misconduct or gross negligence, (i) the sole remedy of the Term Loan Agent or the Term Loan Claimholders for the tender and application of proceeds of the Term Loan Priority Collateral to the Working Capital Obligations shall be to proceed directly against the Grantors unless, prior to the application of such Proceeds to the Working Capital Obligations, the Working Capital Agent shall have received a written notice that such proceeds are (or will be) the proceeds of Term Loan Priority Collateral with such notice to contain the following information: (x) a description of the Term Loan Priority Collateral that is being sold, transferred or otherwise disposed of to generate the proceeds, (y) a description of the transaction generating the proceeds and (z) the actual or anticipated date of such transaction; and (ii) the sole remedy of the Working Capital Agent or the Working Capital Claimholders for the tender and application of proceeds of the Working Capital Priority Collateral to the Term Loan Obligations shall be to proceed directly against the Grantors unless, prior to the application of such proceeds to the Term Loan Obligations, the Term Loan Agent shall have received a written notice that such proceeds are (or will be) the proceeds of the Working Capital Priority Collateral with such notice to contain the following information: (x) a description of the Working Capital Priority Collateral that is being sold, transferred or otherwise disposed of to generate the proceeds, (y) a description of the transaction generating the proceeds and (z) the actual or anticipated date of such transaction.

4.2. Payment Turnover.

(a) Subject to Section 4.1(c), so long as the Discharge of Working Capital Obligations has not occurred, any Working Capital Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in Section 6.4) received by the Term Loan Agent or any other Term Loan Claimholders shall be segregated and held in trust and forthwith paid over to the Working Capital Agent in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Working Capital Agent is hereby authorized to make any such endorsements as agent for the Term Loan Agent or any such Term Loan Claimholders. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(b) Subject to Section 4.1(c), so long as the Discharge of Term Loan Obligations has not occurred, any Term Loan Priority Collateral or proceeds thereof (together with assets or proceeds subject to Liens referred to in Section 6.4) received by the Working Capital Agent or any other Working Capital Claimholders shall be segregated and held in trust and forthwith paid over to the Term Loan Agent for application in accordance with Section 4.1(a) in the same form as received, with any necessary endorsements or as a court of competent jurisdiction may otherwise direct. The Term Loan Agent is hereby authorized to make any such endorsements as agent for the Working Capital Agent or any such Working Capital Claimholders. This authorization is coupled with an interest and is irrevocable until such time as this Agreement is terminated in accordance with its terms.

(c) Subject to Section 4.1(c), so long as the Discharge of Working Capital Obligations has not occurred, any payments received by the Term Loan Agent or any other Term Loan Claimholders on account of the Term Loan Obligations not permitted under Section 6.7(a)(ii) of the Initial Working Capital Credit Agreement as in effect on the date hereof shall be held in trust and forthwith returned to the Borrower. Borrower hereby agrees to remit any such returned amounts in accordance with the Initial Working Capital Credit Agreement.

SECTION 5. OTHER AGREEMENTS

5.1. Releases.

(a) If, in connection with:

(i) the exercise of any of Term Loan Agent's or any Term Loan Claimholder's remedies in respect of the Term Loan Priority Collateral, including any sale, lease, exchange, transfer or other disposition of any such Collateral after an event of default under the terms of and as defined in the Term Loan Credit Documents has occurred and is continuing by or on behalf of Term Loan Agent or a Grantor with the approval of Term Loan Agent (a "**Term Loan Priority Collateral Exercise of Remedies**"); or

(ii) any sale, lease, exchange, transfer or other disposition of any Term Loan Priority Collateral permitted or otherwise consented to under the terms of the Term Loan Credit Documents (whether or not an event of default thereunder, and as defined therein, has occurred and is continuing) (a "**Term Loan Priority Collateral Disposition**");

the Term Loan Agent, for itself or on behalf of any of the Term Loan Claimholders, releases any of its Liens on any part of the Term Loan Priority Collateral, then the Liens, if any, of the Working Capital Agent, for itself or for the benefit of the Working Capital Claimholders, on such Term Loan Priority Collateral shall be automatically, unconditionally and simultaneously released (the "**Term Collateral Second Lien Release**") and the Working Capital Agent, for itself and the Working Capital Claimholders, shall be deemed to have authorized the Term Loan Agent to file UCC amendments and terminations covering the Term Loan Priority Collateral so sold or otherwise disposed of with respect to the UCC financing statements naming any Grantor

as debtor and the Working Capital Agent as secured party to evidence such release and termination and, promptly upon the request of the Term Loan Agent, shall execute and deliver such other release documents and confirmations of the authorization to file UCC amendments and terminations provided for herein, in each case as the Term Loan Agent may require in connection with such sale or other disposition by the Term Loan Agent, the Term Loan Agent's agents or any Grantor with the consent of the Term Loan Agent to evidence and effectuate such termination and release; provided, that, (A) any such release or UCC amendment or termination by or on behalf of the Working Capital Agent shall not extend to or otherwise affect the rights, if any, of the Working Capital Agent to the proceeds from any such sale or other disposition of Term Loan Priority Collateral upon the Discharge of Term Loan Obligations, the Liens securing the Working Capital Obligations shall remain in place with respect to such proceeds that are not applied to repay the Term Loan Obligations, and, except as may otherwise be agreed in writing by Working Capital Agent, Working Capital Agent shall not be deemed to have consented to Borrower's use of any such proceeds other than to pay the Term Loan Obligations, (B) the Term Loan Agent shall use reasonable efforts to afford Working Capital Agent an opportunity to review any UCC amendment or termination filed on its behalf prior to the filing thereof and (C) the Term Collateral Second Lien Release shall not occur without the consent of the Working Capital Agent in connection with a Term Loan Priority Collateral Disposition that is prohibited by any provision of the Working Capital Credit Agreement unless such Term Loan Priority Collateral Disposition is made in connection with a Term Loan Priority Collateral Exercise of Remedies occurring after an event of default under the terms of and as defined in the Term Loan Credit Documents has occurred and is continuing.

(b) Until the Discharge of Term Loan Obligations occurs, the Working Capital Agent, for itself and on behalf of the Working Capital Claimholders, hereby irrevocably constitutes and appoints the Term Loan Agent and any officer or agent of the Term Loan Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Working Capital Agent or any such Claimholder or in the Term Loan Agent's own name, from time to time in the Term Loan Agent's discretion, for the purpose of carrying out the terms of Section 5.1(a), to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of Section 5.1(a), including any endorsements or other instruments of transfer or release.

(c) Until the Discharge of Term Loan Obligations occurs, to the extent that the Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, has released any Liens on Term Loan Priority Collateral and any such Liens are later reinstated or the Term Loan Agent, on behalf of the Term Loan Claimholders, obtains any new Liens from Grantors on any Term Loan Priority Collateral, then the Working Capital Agent, for itself and on behalf of the Working Capital Claimholders, shall be granted a Lien on any such Term Loan Priority Collateral or have its Liens reinstated, as the case may be, in each case subject to the priorities set forth in Section 2.

(d) If, in connection with:

(i) the exercise of any of Working Capital Agent's or any Working Capital Claimholder's remedies in respect of the Working Capital Priority Collateral, including any sale, lease, exchange, transfer or other disposition of any such Collateral after an event of default under the terms of and as defined in the Working Capital Credit Documents has occurred and is continuing by or on behalf of Working Capital Agent or a Grantor with the approval of Working Capital Agent (a "**Working Capital Priority Collateral Exercise of Remedies**"); or

(ii) any sale, lease, exchange, transfer or other disposition of any Working Capital Priority Collateral permitted or otherwise consented to under the terms of the Working Capital Credit Documents (whether or not an event of default thereunder, and as defined therein, has occurred and is continuing) (a "**Working Capital Priority Collateral Disposition**");

the Working Capital Agent, for itself or on behalf of any of the Working Capital Claimholders, releases any of its Liens on any part of the Working Capital Priority Collateral, then the Liens, if any, of the Term Loan Agent, for itself or for the benefit of the Term Loan Claimholders, on such Working Capital Priority Collateral shall be automatically, unconditionally and simultaneously released (the "**Working Capital Collateral Second Lien Release**") and the Term Loan Agent, for itself and the Term Loan Claimholders shall be deemed to have authorized the Working Capital Agent to file UCC amendments and terminations covering the Working Capital Priority Collateral so sold or otherwise disposed of with respect to the UCC financing statements naming any Grantor as debtor and the Term Loan Agent as secured party to evidence such release and termination and, promptly upon the request of the Working Capital Agent, shall execute and deliver such other release documents and confirmations of the authorization to file UCC amendments and terminations provided for herein, in each case as the Working Capital Agent may require in connection with such sale or other disposition by the Working Capital Agent, the Working Capital Agent's agents or any Grantor with the consent of the Working Capital Agent to evidence and effectuate such termination and release; provided, that, (A) any such release or UCC amendment or termination by or on behalf of the Term Loan Agent shall not extend to or otherwise affect the rights, if any, of the Term Loan Agent to the proceeds from any such sale or other disposition of Working Capital Priority Collateral upon the Discharge of Working Capital Obligations, the Liens securing the Term Loan Obligations shall remain in place with respect to such proceeds that are not applied to repay the Working Capital Obligations, and, except as may otherwise be agreed in writing by Term Loan Agent, Term Loan Agent shall not be deemed to have consented to Borrower's use of any such proceeds other than to pay the Working Capital Obligations, (B) Working Capital Agent shall use reasonable efforts to afford Term Loan Agent an opportunity to review any UCC amendment or termination filed on its behalf prior to the filing thereof and (C) the Working Capital Second Lien Release shall not occur without the consent of the Term Loan Agent in connection with a Working Capital Priority Collateral Disposition that is prohibited by any provision of the Term Loan Credit Agreement unless such Working Capital Priority Collateral Disposition is made in connection with a Working Capital Priority Collateral Exercise of Remedies occurring after an event of default under the terms of and as defined in the Working Capital Credit Documents has occurred and is continuing.

(e) Until the Discharge of Working Capital Obligations occurs, the Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, hereby irrevocably constitutes and appoints the Working Capital Agent and any officer or agent of the Working Capital Agent, with full power of substitution, as its true and lawful attorney-in-fact with full irrevocable power and authority in the place and stead of the Term Loan Agent or any such Claimholder or in the Working Capital Agent's own name, from time to time in the Working Capital Agent's discretion, for the purpose of carrying out the terms of Section 5.1(e), to take any and all appropriate action and to execute any and all documents and instruments which may be necessary to accomplish the purposes of Section 5.1(e), including any endorsements or other instruments of transfer or release.

(f) Until the Discharge of Working Capital Obligations occurs, to the extent that the Working Capital Agent, for itself and on behalf of the Working Capital Claimholders, has released any Liens on Working Capital Priority Collateral and any such Liens are later reinstated or the Working Capital Agent, on behalf of the Working Capital Claimholders, obtains any new Liens from Grantors on any Working Capital Priority Collateral, then the Term Loan Agent, for itself and on behalf of the Term Loan Claimholders, shall be granted a Lien on any such Working Capital Priority Collateral or have its Liens reinstated, as the case may be, in each case subject to the priorities set forth in Section 2.

5.2. Sale of Mixed Collateral. In the event that proceeds of Collateral are received in connection with any sale, lease, exchange, transfer or other disposition of any such Collateral that directly or indirectly involves a combination of Working Capital Priority Collateral and Term Loan Priority Collateral, the Working Capital Agent and the Term Loan Agent shall use commercially reasonable efforts in good faith to allocate the proceeds received in connection with such any sale, lease, exchange, transfer or other disposition of any such Collateral to the Working Capital Priority Collateral and the Term Loan Priority Collateral. If the Working Capital Agent and the Term Loan Agent are unable to agree on such allocation within ten (10) days (or such other period of time to which the Working Capital Agent, and the Term Loan Agent mutually agree) of the consummation of such sale, lease, exchange, transfer or other disposition, the portion of such Proceeds that shall be allocated as Proceeds of Accounts and Inventory shall be an amount equal to the net book value of the Accounts and Inventory included in the Collateral so disposed of (determined at the time of such sale, lease, exchange, transfer or other disposition) with the balance of the proceeds to be allocated as may be agreed upon by the Working Capital Agent and Term Loan Agent or as otherwise ordered by a court of competent jurisdiction.

5.3. Insurance. The Working Capital Agent and the Term Loan Agent shall be named as additional insureds with respect to liability insurance policies maintained from time to time by any Grantor, and the Working Capital Agent and the Term Loan Agent, as their interests may appear, shall be named as a loss payee and mortgagee (as applicable) under any casualty insurance policies maintained from time to time by any Grantor, in each case as and to the extent required in the applicable Credit Documents.

(a) As between the Working Capital Agent and Working Capital Claimholders, on the one hand, and the Term Loan Agent and the Term Loan Claimholders on the other hand, the Working Capital Agent and Working Capital Claimholders shall have the

sole and exclusive right, in accordance with and subject to the terms of the Working Capital Credit Documents, (i) to adjust or settle any insurance policy or claim in the event of any loss with respect to the Working Capital Priority Collateral and (ii) to approve any award granted in any condemnation or similar proceeding affecting the Working Capital Priority Collateral. All proceeds of any such policy and any such award in respect of any Working Capital Priority Collateral shall be paid to the Working Capital Agent for the benefit of the Working Capital Claimholders to the extent required under the Working Capital Credit Documents, and thereafter to the owner of the subject property or as a court of competent jurisdiction may otherwise direct.

(b) As between the Term Loan Agent and Term Loan Claimholders, on the one hand, and the Working Capital Agent and the Working Capital Claimholders on the other hand, the Term Loan Agent and Term Loan Claimholders shall have the sole and exclusive right, in accordance with and subject to the terms of the Term Loan Credit Documents, (i) to adjust or settle any insurance policy or claim in the event of any loss with respect to the Term Loan Priority Collateral and (ii) to approve any award granted in any condemnation or similar proceeding affecting the Term Loan Priority Collateral. All proceeds of any such policy and any such award in respect of any Term Loan Priority Collateral shall be paid to the Term Loan Agent for the benefit of the Term Loan Claimholders to the extent required under the Term Loan Credit Documents, and thereafter to the owner of the subject property or as a court of competent jurisdiction may otherwise direct.

(c) If any Agent or Claimholder shall, at any time, receive any proceeds of any such insurance policy or any such award in contravention of this Agreement, it shall pay such proceeds over to the applicable Agent in accordance with the terms of Section 4.2. In the event that an Agent is named as loss payee on property on which it does not have a Lien, such Agent agrees to comply with the instructions of the Agent that has a Lien with respect to such Collateral (i) in adjusting or settling any insurance policy or claim in the event of any loss with respect to such Collateral and (ii) to approving any award granted in any condemnation or similar proceeding affecting such Collateral.

5.4. Access to Term Loan Priority Collateral.

(a) In the event the Term Loan Agent shall acquire control or possession of any of the Term Loan Priority Collateral or shall, through the exercise of remedies under the Term Loan Credit Documents or otherwise, sell any of the Term Loan Priority Collateral to any third party (a "**Third Party Purchaser**"), the Term Loan Agent shall, to the extent permitted by law, permit the Working Capital Agent (or shall require as a condition of such sale to the Third Party Purchaser that the Third Party Purchaser agree to permit the Working Capital Agent), at the Working Capital Agent's option: (i) to enter any of the premises of any Grantor (or Third Party Purchaser) constituting such Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) in order to inspect, remove or take any action with respect to the Working Capital Priority Collateral or to enforce the Working Capital Agent's rights with respect thereto, including, but not limited to, the examination and removal of Working Capital Priority Collateral and the examination and duplication of any Collateral (to the extent not constituting Working Capital Priority Collateral) under such control or possession (or sold to a Third Party Purchaser) consisting of books and records of any Grantor related to

the Working Capital Priority Collateral; (ii) to use the Term Loan Priority Collateral for the purpose of manufacturing or processing raw materials or work in process into finished inventory; (iii) to use any of the Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of computers or other data processing equipment related to the storage or processing of records, documents or files pertaining to the Working Capital Priority Collateral and use any Term Loan Priority Collateral under such control or possession (or sold to a Third Party Purchaser) consisting of other equipment to handle, deal with or dispose of any Working Capital Priority Collateral pursuant to the Working Capital Agent's rights as set forth in the Working Capital Credit Documents, the UCC of any applicable jurisdiction and other applicable law, and (iv) subject to Section 5.5 hereof, to use any of the Term Loan Priority Collateral consisting of Intellectual Property rights owned or controlled by the Term Loan Agent or the other Term Loan Claimholders, as is or may be necessary for the Working Capital Agent to deal with the Working Capital Priority Collateral (including the sale or other disposition thereof). Such use by Working Capital Agent of the Term Loan Priority Collateral shall not be on an exclusive basis.

(b) The Working Capital Agent hereby acknowledges, for itself and on behalf of the other Working Capital Claimholders that, during the period any Working Capital Priority Collateral shall be under control or possession of the Term Loan Agent, the Term Loan Agent shall not be obligated to take any action to protect or to procure insurance with respect to such Working Capital Priority Collateral, it being understood that the Term Loan Agent shall have no responsibility for loss or damage to the Working Capital Priority Collateral (other than as a result of the gross negligence or willful misconduct of the Term Loan Agent or its agents, as determined by a final non appealable judgment of a court of competent jurisdiction) and that all the risk of loss or damage to the Working Capital Priority Collateral shall remain with the Working Capital Claimholders; provided, that to the extent insurance obtained by the Term Loan Agent provides coverage for risks relating to access to or use of Working Capital Priority Collateral, the Working Capital Agent will be made an additional named insured thereunder.

(c) The rights of Working Capital Agent set forth in Section 5.4(a)(i)-(iii) above shall continue until the later of (i) 180 days after the date Working Capital Agent first receives written notice from the Term Loan Agent that it has control or possession of the Term Loan Priority Collateral at issue and (ii) the sale or other disposition of the Term Loan Priority Collateral by the Term Loan Agent or its constituents. Such time period shall be tolled during the pendency of any Insolvency or Liquidation Proceeding of any Grantor or other proceedings pursuant to which the Working Capital Claimholders and the Term Loan Claimholders are effectively stayed from enforcing their rights against the Working Capital Priority Collateral. In no event shall any Term Loan Claimholder take any action to interfere, limit or restrict the rights of Working Capital Agent or the exercise of such rights by Working Capital Agent to have access to or to use any of the Term Loan Priority Collateral pursuant to Section 5.4(a) prior to the expiration of such period.

(d) During the actual occupation, use or control by the Working Capital Agent or its agents or representatives, of any real property constituting Term Loan Priority Collateral during the access and use period permitted by Section 5.4(a) above, the Working Capital Claimholders (i) shall be obligated to pay to the Term Loan Claimholders any third-party expenses directly related thereto, including a pro rata share of any monthly rent payments

payable by Term Loan Agent, and to the extent not paid as rent, incremental costs with respect to heat, light, electricity, water, security, maintenance and other items, in each case with respect to that portion of any premises used or occupied, or that arise as a result of such use, to the extent such costs would not have otherwise been incurred but for the exercise of Working Capital Agent's rights under this Section 5.4, and (ii) shall be obligated to repair at their expense any physical damage (ordinary wear and tear excepted) to such Term Loan Priority Collateral or other assets or property resulting from such occupancy, use or control or from the removal of any Working Capital Priority Collateral, and to leave such Term Loan Priority Collateral or other assets or property in substantially the same condition as it was at the commencement of such occupancy, use or control (ordinary wear and tear excepted). Working Capital Claimholders shall indemnify Term Loan Claimholders on demand for all costs (including attorneys' fees and disbursements), losses, damages and liabilities incurred by any of them as a result of the occupancy, use or control, by the Working Capital Agent or its agents or representatives, of any real property constituting Term Loan Priority Collateral (subject to ordinary wear and tear as contemplated herein) and including all losses, damages and liabilities so incurred to the extent arising from any claim by a third party against such Term Loan Claimholders as determined by a final order of a court of competent jurisdiction to be the direct result of any action by Working Capital Agent (or its representatives) pursuant to the exercise of its rights of access and the use under this Section 5.4 and so long as such loss, damage and/or liability is not caused by the negligent acts or willful misconduct of any Term Loan Claimholder as determined by a final order of a court of competent jurisdiction (such indemnification payments to be subject to indemnification by the Grantors to the extent provided in the Working Capital Credit Agreement and to constitute Working Capital Obligations for all purposes hereunder). Notwithstanding the foregoing, in no event shall the Working Capital Agent have any liability to the Term Loan Claimholders pursuant to this Section as a result of any condition (including any environmental condition, claim or liability) on or with respect to the Term Loan Priority Collateral existing prior to the date of the exercise by the Working Capital Claimholders of their rights under this Section and the Working Capital Agent shall have no duty or liability to maintain the Term Loan Priority Collateral in a condition or manner better than that in which it was maintained prior to the use thereof by the Working Capital Claimholders, or for any diminution in the value of the Term Loan Priority Collateral that results solely from ordinary wear and tear resulting from the use of the Working Capital Priority Collateral by the Working Capital Claimholders, in the manner and for the time periods specified under this paragraph or from the removal of Working Capital Priority Collateral.

(e) In the event that Working Capital Agent shall, in the exercise of its rights under the Working Capital Credit Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the Term Loan Priority Collateral, Working Capital Agent shall, upon request from Term Loan Agent and as promptly as practicable thereafter, either make available to Term Loan Agent such books and records for inspection and duplication or provide to Term Loan Agent copies thereof at Term Loan Agent's cost. In the event that Term Loan Agent shall, in the exercise of its rights under the Term Loan Credit Documents or otherwise, receive possession or control of any books and records of any Grantor which contain information identifying or pertaining to any of the Working Capital Priority Collateral, Term Loan Agent shall, upon request from Working Capital Agent and as promptly as practicable thereafter, either make available to Working

Capital Agent such books and records for inspection and duplication or provide to Working Capital Agent copies thereof at Working Capital Agent's cost.

5.5. Consent to Limited License. The Term Loan Agent, on behalf of the Term Loan Claimholders, hereby irrevocably grants the Working Capital Priority Agent an irrevocable, non-exclusive worldwide license to or right to use, to the extent permitted by law and any applicable contractual obligations binding on the Term Loan Priority Collateral, exercisable without payment of royalty or other compensation, and solely to the extent the Term Loan Agent has an ownership interest therein or other assignable right of use thereto, any of the Intellectual Property now or hereafter owned by, licensed to, or otherwise used by the Company in order for the Working Capital Agent and the Working Capital Claimholders to purchase, use, market, repossess, possess, store, assemble, manufacture, process, sell, transfer, distribute or otherwise dispose of any Working Capital Priority Collateral, or in connection with the liquidation, disposition, foreclosure, realization upon, or taking of reasonable actions to protect, secure and otherwise enforce the rights of Working Capital Agent in the Working Capital Priority Collateral or otherwise deal with the Working Capital Priority Collateral in accordance with the terms of the Working Capital Collateral Documents or applicable law, in each case without liability to any of the Term Loan Claimholders and without the involvement or interference or restriction by any of the Term Loan Claimholders; provided that such license shall expire (as to any particular Working Capital Priority Collateral) on the earlier of (i) 18 months (such period to be calculated by excluding any day on which enforcement actions are stayed as a result of an Insolvency or Liquidation Proceeding with respect to the Grantor owning the Collateral against which such enforcement action is directed) following the commencement of the right to access the Term Loan Priority Collateral pursuant to Section 5.4 (the "**License Expiration Date**"). Notwithstanding the occurrence of the License Expiration Date, Working Capital Agent shall have the right to sell, transfer or otherwise dispose of any Working Capital Priority Collateral that prior to the License Expiration Date is branded or becomes branded, or produced through the use or other application of any Intellectual Property, whether pursuant to the exercise of rights pursuant to this Section 5.5 or otherwise, and to use such branded trademarks and tradenames in connection with the advertising and marketing of such sale, transfer or other disposition of such branded Working Capital Priority Collateral. The Term Loan Agent acknowledges and consents to the grant by the Grantors of the irrevocable, non-exclusive license or other right to use, license or sub-license (without payment of royalty or other compensation to any Person) any or all Intellectual Property and certain related assets of the Grantors as set forth in Section 16(b) of the Security Agreement (as defined in the Initial Working Capital Credit Agreement) as in effect as of the date hereof or on substantially equivalent terms in the case of any Working Capital Credit Agreement other than the Initial Working Capital Credit Agreement (the "**Closing Date License**") and agrees that the Term Loan Agent's Lien on the Term Loan Priority Collateral shall be subject to such Closing Date License. Furthermore, the Term Loan Agent agrees that if any of the Term Loan Priority Collateral described in the Closing Date License and in this Section 5.5 is sold, transferred or otherwise disposed of (whether pursuant to an Enforcement Action or otherwise) prior to the License Expiration Date, (x) any notice required to be given by the Term Loan Agent in connection therewith shall contain an acknowledgement that the Term Loan Agent's Lien on the Term Loan Priority Collateral is subject to the Closing Date License and the license granted by Term Loan Agent pursuant to this Section 5.5, (y) the Term Loan Agent shall provide written notice to any third party purchaser thereof that the Term Loan Agent's Lien on the Term Loan Priority Collateral and such purchasers' rights in such sold,

transferred or otherwise disposed of assets will be subject to the Closing Date License and the license granted by Term Loan Agent pursuant to this Section 5.5, and (z) the purchaser shall acknowledge in writing that it purchased any such assets subject to the Closing Date License and the license granted by Term Loan Agent pursuant to this Section 5.5.

5.6. Each Agent as Bailee.

(a) Each Agent agrees to hold any Collateral that is in its possession, to the extent that possession thereof is effective to perfect a Lien thereon under the UCC (such Collateral being referred to herein as the "**Pledged Collateral**"), as bailee and agent for and on behalf of the other Agent solely for the purpose of perfecting the Lien granted to the other Agent in such Pledged Collateral (including as to any securities or any deposit accounts or securities accounts, if any, for purposes of satisfying the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the UCC) pursuant to the Working Capital Credit Documents or Term Loan Credit Documents, as applicable, subject to the terms and conditions of this Section 5.6 and Section 5.7.

(b) Until the Discharge of Working Capital Obligations has occurred, Working Capital Agent shall be entitled to deal with the Pledged Collateral constituting Working Capital Priority Collateral in accordance with the terms of the Working Capital Credit Documents. The rights of Term Loan Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to Working Capital Agent's rights under the Working Capital Credit Documents. Until the Discharge of Term Loan Obligations has occurred, Term Loan Agent shall be entitled to deal with the Pledged Collateral constituting Term Loan Priority Collateral in accordance with the terms of the Term Loan Credit Documents. The rights of Working Capital Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to Term Loan Agent's rights under the Term Loan Credit Documents.

(c) Each Agent shall have no obligation whatsoever to the other Agent or any other Claimholder to assure that the Pledged Collateral is genuine or owned by any of the Grantors or to preserve rights or benefits of any Person except as expressly set forth in this Section 5.6 and Section 5.7. The duties or responsibilities of each Agent under this Section 5.6 shall be limited solely to possessing the Pledged Collateral as bailee and agent for and on behalf of the other Agent for purposes of perfecting the Lien held by the other Agent.

(d) Each Agent shall not have by reason of the Working Capital Credit Documents, the Term Loan Credit Documents or this Agreement or any other document or otherwise in connection with the transactions contemplated by this Agreement, the Working Capital Credit Documents and the Term Loan Credit Documents a fiduciary relationship in respect of the other Agent or any of the other Claimholders and shall not have any liability to the other Agent or any other Claimholder in connection with its holding the Pledged Collateral. Each Agent hereby waives any claims against the other Agent for any breach or alleged breach of fiduciary duty.

5.7. Transfer of Pledged Collateral; Relinquishment of Control.

(a) Upon the Discharge of Working Capital Obligations, to the extent permitted under applicable law, upon the request of Term Loan Agent:

(i) Working Capital Agent shall, without recourse or warranty, transfer the Pledged Collateral, if any, then in its possession to Term Loan Agent, except in the event and to the extent (A) Working Capital Agent or any other Working Capital Claimholder has retained or otherwise acquired such Collateral in full or partial satisfaction of any of the Working Capital Obligations, (B) such Collateral is sold or otherwise disposed of by Working Capital Agent or any other Working Capital Claimholder or by a Grantor, or (C) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of any Working Capital Claimholder to any third party.

(ii) The foregoing provision shall not impose on Working Capital Agent or any other Working Capital Claimholder any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(b) Upon the Discharge of Term Loan Obligations, to the extent permitted under applicable law, upon the request of Working Capital Agent,

(i) Term Loan Agent shall, without recourse or warranty, transfer the Pledged Collateral, if any, then in its possession to Working Capital Agent, except in the event and to the extent (A) Term Loan Agent or any other Term Loan Claimholder has retained or otherwise acquired such Collateral in full or partial satisfaction of any of the Term Loan Obligations, (B) such Collateral is sold or otherwise disposed of by Term Loan Agent or any other Term Loan Claimholder or by a Grantor, or (C) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of any Term Loan Claimholder to any third party.

(ii) The foregoing provision shall not impose on Term Loan Agent or any other Term Loan Claimholder any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(c) Upon the Discharge of the Working Capital Obligations, with respect to any Collateral under the control (as defined in the UCC for perfection purposes) but not the possession of Working Capital Agent, Working Capital Agent shall notify the other parties to the agreements establishing such control that it is no longer the "Secured Party Representative", "Agent Representative", "Lender Representative," or similarly named secured party with control thereunder, or otherwise entitled to act under such agreement, and it shall confirm to such parties that Term Loan Agent is thereafter the "Secured Party Representative", "Agent Representative", "Lender Representative" or similarly named secured party with control as any of such terms are used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement.

(d) Upon the Discharge of the Term Loan Obligations, with respect to any Collateral under the control (as defined in the UCC for perfection purposes) but not the possession of Term Loan Agent, Term Loan Agent shall notify the other parties to the agreements establishing such control that it is no longer the "Secured Party Representative", "Agent Representative", "Lender Representative," or similarly named secured party with control thereunder, or otherwise entitled to act under such agreement, and it shall confirm to such parties that Working Capital Agent is thereafter the "Secured Party Representative", "Agent Representative", "Lender Representative" or similarly named secured party with control as any of such terms are used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement.

(e) Each Grantor acknowledges and agrees to the delivery or transfer of possession or control by Working Capital Agent to Term Loan Agent, and by Term Loan Agent to Working Capital Agent, of any such Pledged Collateral and other Collateral and waives and releases Working Capital Agent and the Working Capital Claimholders, and Term Loan Agent and the Term Loan Claimholders, from any liability as a result of such action. Each Grantor shall take such further actions as are reasonably required to effectuate the transfer contemplated in this Section 5.7 and shall indemnify the Agent having the first priority Lien prior to such transfer for loss or damage suffered by such Agent as a result of such transfer, except to the extent resulting from such Agent's own gross negligence or willful misconduct as determined pursuant to a final, non-appealable order of a court of competent jurisdiction.

SECTION 6. INSOLVENCY OR LIQUIDATION PROCEEDINGS

6.1. Financing Issues. If Company or any other Grantor shall be subject to any Insolvency or Liquidation Proceeding and the Priority Agent shall desire to permit the use of cash collateral which constitutes such Priority Agent's constituents' Priority Collateral or to permit Company or any other Grantor to obtain financing secured by such Priority Collateral (and not by any Collateral which does not constitute such Priority Agent's Priority Collateral), from one or more of the Claimholders for whom such Priority Agent acts as Agent, under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law (such financing predicated on use or collateral consisting solely of Priority Collateral, a "**DIP Financing**"), then each Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders, (A) agrees that it will raise no objection to such use of cash collateral or DIP Financing nor support any other Person objecting to, such sale, use, or lease of cash collateral or DIP Financing and will not request any form of adequate protection or any other relief in connection therewith (except as agreed by the Priority Agent or to the extent expressly permitted by Section 6.4), and each Non-Priority Agent will subordinate its Liens in such Priority Collateral to (x) the Liens securing such DIP Financing (and all Obligations relating thereto), (y) any adequate protection Liens provided to the Priority Claimholders and (z) any "carve-out" for professional or United States Trustee fees agreed to by the Priority Agent; (B) agrees that, at the option of the Priority Agent, an order approving such DIP Financing or cash collateral usage may be entered even if the order provides that any claim arising under section 507(b) of the Bankruptcy Code as a result of a failure of adequate protection of the liens of the Non-Priority Claimholders in Collateral which is not its Priority Collateral may not be paid from the proceeds of claims arising under sections 544, 546, 547, 548 or 550 of the Bankruptcy Code; and (C) agree that notice received two (2) calendar days prior to the entry of an order approving such

usage of cash collateral or approving such DIP Financing shall be adequate notice; provided that the foregoing shall not prohibit any Non-Priority Agent or the Non-Priority Claimholders from objecting solely to any provisions in any agreement or orders regarding the use of cash collateral or any DIP Financing that are otherwise inconsistent with the terms of this Agreement. Without limiting, but in addition to the foregoing, each non-priority Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it shall be deemed to object to a DIP Financing to which the Priority Agent expressly objects in writing. The Term Loan Agent and Term Loan Claimholders shall not, directly or indirectly, offer to provide, support any other Person in providing, provide or seek to provide financing to the Company or any other Grantor under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law secured by Liens on the Working Capital Priority Collateral equal or senior to the Liens of the Working Capital Agent, without the prior written consent of the Working Capital Agent. The Working Capital Agent and Working Capital Claimholders shall not, directly or indirectly, offer to provide, support any other Person in providing, provide or seek to provide financing to the Company or any other Grantor under Section 363 or Section 364 of the Bankruptcy Code or any similar Bankruptcy Law secured by Liens on the Term Loan Priority Collateral equal or senior to the Liens of the Term Loan Agent, without the prior written consent of the Term Loan Agent. All references to any Collateral hereunder shall be construed to include any assets arising after the commencement of the case under the Bankruptcy Code of the same type or category as such Collateral.

6.2. Sale Issues**.** Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it will raise no objection to or oppose a sale or other disposition of any Collateral which does not constitute its Priority Collateral free and clear of its Liens or other claims under Section 363 of the Bankruptcy Code if the Priority Agent has consented to such sale or disposition of such assets so long as the interests of such Agent and the Claimholders for whom it acts as Agent in such Collateral attach to the proceeds thereof, subject to the terms of this Agreement. Without limiting but in addition to the foregoing, each Non-Priority Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that it shall be deemed to object to any such sale or other disposition to which the Priority Agent expressly objects in writing. If requested by any Priority Agent, each Non-Priority Agent shall affirmatively consent or object to such a sale or disposition in accordance with this Section 6.2.

6.3. Relief from the Automatic Stay**.** Each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that none of them shall (i) seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of any Collateral which does not constitute its Priority Collateral, without the prior written consent of the Priority Agent, or (ii) oppose any request by any Priority Agent or any Priority Claimholder to seek relief from the automatic stay or any other stay in any Insolvency or Liquidation Proceeding in respect of their respective Priority Collateral.

6.4. Adequate Protection.

(a) Term Loan Agent and Term Loan Claimholders may not seek adequate protection of its interest in the Term Loan Priority Collateral in the form of additional or replacement Liens in assets of the type included in Working Capital Priority Collateral unless (i) Working Capital Agent, on behalf of the Working Capital Claimholders, has or is granted an

additional or replacement Lien on such assets, and (ii) any additional or replacement adequate protection Liens obtained by Term Loan Agent, on behalf of Term Loan Claimholders, are junior and subordinate to the Liens and any additional or replacement Liens obtained by Working Capital Agent, on behalf of the Working Capital Claimholders, as adequate protection in existing or future assets of the type included in Working Capital Priority Collateral.

(b) Working Capital Agent and Term Working Capital Claimholders may not seek adequate protection of its interest in the Working Capital Priority Collateral in the form of additional or replacement Liens in assets of the type included in Term Loan Priority Collateral unless (i) Term Loan Agent, on behalf of the Term Loan Claimholders, has or is granted an additional or replacement Lien on such assets, and (ii) any additional or replacement adequate protection Liens obtained by Working Capital Agent, on behalf of Working Capital Claimholders, are junior and subordinate to the Liens and any additional or replacement Liens obtained by Term Loan Agent, on behalf of the Term Loan Claimholders, as adequate protection in existing or future assets of the type included in Term Loan Priority Collateral.

(c) Subject to Section 6.4, each Agent, on behalf of itself and the Claimholders for whom it acts as Agent, may seek adequate protection of its interest in its respective Priority Collateral and each other Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that none of them shall contest (or support any other person contesting) (i) any such request for adequate protection by any Priority Agent with respect to its Priority Collateral or (ii) any objection by any Priority Agent or the Priority Claimholders to any motion, relief, action or proceeding based on any Priority Agent or the Priority Claimholders claiming a lack of adequate protection of their interests in their respective Priority Collateral. Each Agent acknowledges and agrees that any superpriority administrative expense claim granted to such Agent or arising under 11 U.S.C. § 507(b) as adequate protection of its interest in its respective Priority Collateral shall be pari passu with any superpriority administrative expense claim granted to any other Agent as adequate protection of their interest in its respective Priority Collateral.

(d) Each Non-Priority Agent, on behalf of itself and the Claimholders for whom it acts as Agent, may seek adequate protection of its junior interest in Collateral, subject to the provisions of this Agreement (including Section 6.4), only if (A) the Priority Agent is granted adequate protection in the form of a replacement Lien on post-petition collateral of the same type as such Priority Agent's Priority Collateral, and (B) such additional protection requested by such Non-Priority Agent is in the form of a replacement Lien on such post-petition collateral of the same type as such Priority Collateral, which Lien, if granted, will be subordinated to the adequate protection Liens granted in favor of such Priority Agent on such post-petition collateral and the Liens securing any DIP financing (and all Obligations relating thereto) secured by such Priority Collateral on the same basis as the Liens of such Non-Priority Agent on such Priority Collateral are subordinated to the Liens of such Priority Agent on such Priority Collateral under this Agreement. In the event that a Non-Priority Agent, on behalf of itself or any of the Claimholders for whom it acts as Agent, seeks or requests (or is otherwise granted) adequate protection of its junior interest in Collateral in the form of a replacement Lien on additional collateral in any form, then such Non-Priority Agent, on behalf of itself and the Claimholders for whom it acts as Agent, agrees that (i) if the other Agent, on account of holding a junior interest in Collateral, shall also be granted a replacement lien on such

additional collateral as adequate protection of such junior interest in such Collateral, such Non-Priority Agent's replacement Lien shall be pari passu to the replacement Lien of such other Non-Priority Agent and (ii) each Priority Agent shall also be granted a replacement Lien on such additional collateral as adequate protection of its senior interest in Collateral and that such Non-Priority Agent's replacement Lien shall be subordinated to the replacement Lien of each such Priority Agent. If any Agent or Claimholder receives as adequate protection a Lien on post-petition assets of the same type as its pre-petition Priority Collateral, then such post-petition assets shall also constitute Priority Collateral of such Person to the extent of any allowed claim secured by such adequate protection Lien.

(e) Each Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders for whom it acts as Agent, may seek and receive additional adequate protection of its junior interest in Collateral, subject to the provisions of this Agreement, in the form of a superpriority administrative expense claim, including a claim arising under 11 U.S.C. § 507(b), which superpriority administrative expense claim shall be junior in all respects to any superpriority administrative expense claim granted to the Priority Claimholders with respect to such Collateral and pari passu in all respects with any superpriority administrative expense claim granted to the other Non-Priority Claimholders with respect to such Collateral. In the event that a Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders for whom it acts as Agent, seeks or receives protection of its junior interest in Collateral and is granted a superpriority administrative expense claim, including a claim arising under 11 U.S.C. § 507(b), then such Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders for whom it acts as Agent, agrees that (i) the Priority Claimholders shall receive a superpriority administrative expense claim which shall be senior in all respects to the superpriority administrative expense claim granted to such Non-Priority Agent with respect to such Collateral and (ii) the other Non-Priority Claimholders shall receive a superpriority administrative expense claim which shall be pari passu in all respects with the superpriority administrative expense claim granted to such Non-Priority Agent with respect to such Collateral.

6.5. Separate Grants of Security and Separate Classification. Each of the Grantors and each of the Claimholders acknowledges and agrees with respect to each class of Priority Collateral that (i) the grants of Liens pursuant to the Working Capital Collateral Documents, on the one hand, and the Term Loan Collateral Documents, on the other hand, constitute separate and distinct grants of Liens and (ii) because of, among other things, their differing rights in the Collateral, the Working Capital Obligations, on the one hand, and the Term Loan Obligations, on the other hand, are fundamentally different from one another and must be separately classified in any plan of reorganization proposed or adopted in an Insolvency or Liquidation Proceeding. To further effectuate the intent of the parties as provided in the immediately preceding sentence, if it is held that the claims of (x) the Working Capital Claimholders and (y) the Term Loan Claimholders in respect of any Priority Collateral, constitute only one secured claim (rather than separate classes of senior and junior secured claims), then the Priority Claimholders shall be entitled to receive, in addition to amounts distributed to them from, or in respect of, their Priority Collateral in respect of principal, pre-petition interest and other claims, all amounts owing in respect of post-petition interest, fees, costs and other charges, irrespective of whether a claim for such amounts is allowed or allowable in such Insolvency or Liquidation Proceeding, before any distribution from, or in respect of, any such Priority Collateral is made in respect of the claims held by the Non-Priority Claimholders, with the Non-Priority Claimholders hereby

acknowledging and agreeing to turn over to the Priority Claimholders amounts otherwise received or receivable by them to the extent necessary to effectuate the intent of this sentence, even if such turnover has the effect of reducing the claim or recovery of the Non-Priority Claimholders.

6.6. Post-Petition Claims**.** No Agent, nor any of the Claimholders for which it acts as Agent, shall oppose or seek to challenge (a) any claim by any Priority Agent or any Priority Claimholder for allowance in any Insolvency or Liquidation Proceeding of Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the lien of such Priority Agent in such Priority Agent's Priority Collateral, without regard to the existence of the Lien of any Non-Priority Agent in such Collateral, or (b) any claim by any Non-Priority Agent or any Non-Priority Claimholder for allowance in any Insolvency or Liquidation Proceeding of Obligations consisting of post-petition interest, fees, costs, charges or expenses to the extent of the value of the lien of such Non-Priority Agent in such Collateral.

6.7. Avoidance Issues. If any Working Capital Claimholder or any Term Loan Claimholder is required in any Insolvency or Liquidation Proceeding, or otherwise, to turn over or otherwise pay to the estate of any Grantor any amount in respect of any Working Capital Obligation or any Term Loan Obligation, respectively (a "**Recovery**"), then such Claimholder shall be entitled to a reinstatement of its Obligations with respect to all such recovered amounts. If this Agreement shall have been terminated prior to such Recovery, this Agreement shall be reinstated in full force and effect, and such prior termination shall not diminish, release, discharge, impair or otherwise affect the obligations of the parties hereto from such date of reinstatement. Working Capital Priority Collateral or proceeds thereof received by any Term Loan Agent or any other Term Loan Claimholder after a Discharge of Working Capital Obligations and prior to the reinstatement of such Working Capital Obligations shall be delivered to the Working Capital Agent upon such reinstatement in accordance with Section 4.2, and Term Loan Priority Collateral or proceeds thereof received by any Working Capital Agent or any other Working Capital Claimholder after a Discharge of Term Loan Obligations and prior to the reinstatement of Term Loan Obligations shall be delivered to the Term Loan Agent upon such reinstatement in accordance with Section 4.2.

6.8. Expense Claims. Each Non-Priority Agent, for itself and on behalf of the Claimholders for whom it acts as Agent, agrees that it will not (i) contest the payment of fees, expenses or other amounts to any Priority Agent or any Priority Claimholder under Section 506(b) of the Bankruptcy Code or otherwise to the extent of the value of the lien of such Priority Agent in such Priority Agent's Priority Collateral and to the extent provided for in the applicable Credit Agreement or (ii) assert or enforce any claim under Section 506(c) of the Bankruptcy Code senior to or on parity with the Lien of any Priority Agent for costs or expenses of preserving or disposing of such Priority Agent's Priority Collateral.

6.9. Effectiveness in Insolvency or Liquidation Proceedings. This Agreement, which the parties hereto expressly acknowledge is a "subordination agreement" under Section 510(a) of the Bankruptcy Code, shall be effective before, during and after the commencement of an Insolvency or Liquidation Proceeding. All references in this Agreement to any Grantor shall include such Person as a debtor-in-possession and any receiver or trustee for such Person in any Insolvency or Liquidation Proceeding.

SECTION 7. RELIANCE; WAIVERS; ETC.

7.1. Non-Reliance.

(a) The consent by the Working Capital Claimholders to the execution and delivery of the Term Loan Credit Documents and the grant to the Term Loan Agent on behalf of the Term Loan Claimholders of a Lien on the Working Capital Priority Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Working Capital Claimholders to the Grantors, shall be deemed to have been given and made in reliance upon this Agreement. The consent by the Term Loan Claimholders to the execution and delivery of the Working Capital Credit Documents and the grant to the Working Capital Agent on behalf of the Working Capital Claimholders of a Lien on the Term Loan Priority Collateral and all loans and other extensions of credit made or deemed made on and after the date hereof by the Term Loan Claimholders to the Grantors, shall be deemed to have been given and made in reliance upon this Agreement.

(b) The Term Loan Agent and the Term Loan Administrative Agent, on behalf of themselves and the other Term Loan Claimholders, acknowledge that they and the Term Loan Claimholders have, independently and without reliance on the Working Capital Agent or any other Working Capital Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Term Loan Credit Agreement, the other Term Loan Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the Term Loan Credit Agreement, the other Term Loan Credit Documents or this Agreement. The Working Capital Agent and the Working Capital Administrative Agent, on behalf of themselves and the other Working Capital Claimholders, acknowledge that they and the Working Capital Claimholders have, independently and without reliance on the Term Loan Agent or any other Term Loan Claimholder, and based on documents and information deemed by them appropriate, made their own credit analysis and decision to enter into the Working Capital Credit Agreement, the other Working Capital Credit Documents, this Agreement and the transactions contemplated hereby and thereby and they will continue to make their own credit decision in taking or not taking any action under the Working Capital Credit Agreement, the other Working Capital Credit Documents or this Agreement.

7.2. No Warranties or Liability.

(a) The Working Capital Agent, on behalf of itself and the Working Capital Claimholders, acknowledges and agrees that the Term Loan Agent and the Term Loan Claimholders have made no express or implied representation or warranty, including with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Term Loan Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(b) The Term Loan Agent, on behalf of itself and the Term Loan Claimholders, acknowledges and agrees that the Working Capital Agent and the Working Capital Claimholders have made no express or implied representation or warranty, including

with respect to the execution, validity, legality, completeness, collectability or enforceability of any of the Working Capital Credit Documents, the ownership of any Collateral or the perfection or priority of any Liens thereon.

(c) The Term Loan Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Term Loan Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate. The Working Capital Claimholders will be entitled to manage and supervise their respective loans and extensions of credit under the Working Capital Credit Documents in accordance with law and as they may otherwise, in their sole discretion, deem appropriate.

(d) Neither any Agent nor any Claimholder for which such Agent acts as Agent shall have any duty to any other Agent or any Claimholder for which such other Agent acts as Agent to act or refrain from acting in a manner which allows, or results in, the occurrence or continuance of an event of default or default under any agreements with Company or any Grantor (including the Working Capital Credit Documents and the Term Loan Credit Documents), regardless of any knowledge thereof which they may have or be charged with.

7.3. No Waiver.

(a) No right of the Working Capital Agent and the Working Capital Claimholders, the Term Loan Agent and the Term Loan Claimholders, or any of them to enforce any provision of this Agreement or their respective Credit Documents shall at any time in any way be prejudiced or impaired by any act or failure to act on the part of the Company or any other Grantor or by any act or failure to act by such party, or by any noncompliance by any Person with the terms, provisions and covenants of this Agreement or their respective Credit Documents, regardless of any knowledge thereof which such party may have or be otherwise charged with.

(b) Without in any way limiting the generality of the foregoing paragraph (but subject to the rights of the Company and the other Grantors under the applicable Credit Documents), the Working Capital Agent and the Working Capital Claimholders, and the Term Loan Agent and the Term Loan Claimholders, and any of them may, at any time and from time to time in accordance with their respective Credit Documents or applicable law, without the consent of, or notice to, the other Claimholders and without incurring any liabilities to the other Claimholders and without impairing the agreements and other benefits provided in this Agreement (even if any right of subrogation or other right or remedy of the other Claimholders is affected, impaired or extinguished thereby) do any one or more of the following:

(i) make loans and advances to any Grantor or issue, guaranty or obtain letters of credit for account of any Grantor or otherwise extend credit to any Grantor, in any amount and on any terms, whether pursuant to a commitment or as a discretionary advance and whether or not any default or event of default or failure of condition is then continuing (subject, in each case, to any limitations expressly set forth in this Agreement);

(ii) change the manner, place or terms of payment or change or extend the time of payment of, or amend, renew, exchange, increase or alter, the terms of any of their respective Obligations or guaranty thereof or any liability of the Company or any other Grantor, or any liability incurred directly or indirectly in respect thereof (including any increase in or extension of their respective Obligations, without any restriction as to the amount, tenor or terms of any such increase or extension, subject to any limitations expressly set forth in this Agreement) or, subject to the provisions of this Agreement, otherwise amend, renew, exchange, extend, modify or supplement in any manner any Liens held by such Agent or such Claimholders, their respective Obligations or any of their respective Credit Documents; provided, however, the foregoing shall not prohibit any other Agent and any other Claimholders from enforcing, consistent with the other terms of this Agreement, any right arising under their respective Credit Agreement or other Credit Documents as a result of any Grantor's violation of the terms thereof;

(iii) subject to the provisions of this Agreement, sell, exchange, release, surrender, realize upon, enforce or otherwise deal with in any manner and in any order any part of the Collateral or any liability of the Company or any other Grantor to such Claimholders or such Agent, or any liability incurred directly or indirectly in respect thereof;

(iv) settle or compromise their respective Obligations or any portion thereof or any other liability of the Company or any other Grantor or any security therefor or any liability incurred directly or indirectly in respect thereof and apply any sums by whomsoever paid and however realized to any liability (including their respective Obligations) in any manner or order;

(v) subject to the restrictions set forth in this Agreement, exercise or delay in or refrain from exercising any right or remedy against the Company or any security or any other Grantor or any other Person, elect any remedy and otherwise deal freely with Company, any other Grantor or its respective Collateral and any security and any guarantor or any liability of the Company or any other Grantor to such Claimholders or any liability incurred directly or indirectly in respect thereof;

(vi) take or fail to take any Lien securing their respective Obligations or any other collateral security for such Obligations or take or fail to take any action which may be necessary or appropriate to ensure that any Lien securing such Obligations or any other Lien upon any property is duly enforceable or perfected or entitled to priority as against any other Lien, provided that Liens taken in violation of Section 2.5 shall be subject to the provisions of Section 2.5; or

(vii) otherwise release, discharge or permit the lapse of any or all Liens securing their respective Obligations or any other Liens upon any property at any time securing any such Obligations.

(c) Each Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders for which it acts as Non-Priority Agent, also agrees that no Priority Agent or Priority Claimholders shall have any liability to such Non-Priority Agent or such Non-Priority

Claimholders, and such Non-Priority Agent and such Non-Priority Claimholders, hereby waive all claims against any Priority Agent and any Priority Claimholders, arising out of any and all actions which such Priority Agent or such Priority Claimholders may take or permit or omit to take with respect to their Priority Collateral. Each Non-Priority Agent, on behalf of itself and the Non-Priority Claimholders for which it acts as Agent, agrees that no Priority Agent or Priority Claimholders shall have any duty to them in respect of the maintenance or preservation of any Priority Agent's Priority Collateral.

(d) Each Agent, on behalf of itself and the Claimholders for which it acts as Agent, agrees not to assert and hereby waives, to the fullest extent permitted by law, any right to demand, request, plead or otherwise assert or otherwise claim the benefit of, any marshaling, appraisal, valuation or other similar right that may otherwise be available under applicable law with respect to Collateral that does not constitute its Collateral or any other similar rights a junior secured creditor may have under applicable law.

7.4. Obligations Unconditional. All rights, interests, agreements and obligations of the Working Capital Agent and the Working Capital Claimholders, and the Term Loan Agent and the Term Loan Claimholders, respectively, hereunder shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any Working Capital Credit Documents, or any Term Loan Credit Documents or any setting aside or avoidance of any Lien;

(b) except as otherwise set forth in this Agreement, any change in the time, manner or place of payment of, or in any other terms of, all or any of the Working Capital Obligations, or the Term Loan Obligations, or any amendment or waiver or other modification, including any increase in the amount thereof, whether by course of conduct or otherwise, of the terms of any Working Capital Credit Document or any Term Loan Credit Document;

(c) any exchange of any security interest in any Collateral or any other collateral (except to the extent prohibited by Section 2.5 of this Agreement), or any amendment, waiver or other modification, whether in writing or by course of conduct or otherwise, of all or any of the Working Capital Obligations or the Term Loan Obligations or any guarantee thereof;

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

(e) any other circumstances which otherwise might constitute a defense available to, or a discharge of, the Company or any other Grantor in respect of the Working Capital Obligations or the Term Loan Obligations.

7.5. Certain Notices.

(a) Promptly upon the Discharge of Working Capital Obligations, the Working Capital Agent shall deliver written notice confirming same to the Term Loan Agent; provided that the failure to give any such notice shall not result in any liability of the Working Capital Agent or the other Working Capital Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder. Promptly upon the

Discharge of Term Loan Obligations, the Term Loan Agent shall deliver written notice confirming same to the Working Capital Agent; provided that the failure to give any such notice shall not result in any liability of the Term Loan Agent or the other Term Loan Claimholders hereunder or in the modification, alteration, impairment, or waiver of the rights of any party hereunder.

SECTION 8. MISCELLANEOUS

8.1. Conflicts. In the event of any conflict between the provisions of this Agreement and the provisions of the Term Loan Credit Documents or the Working Capital Credit Documents, the provisions of this Agreement shall govern and control. The parties hereto acknowledge that the terms of this Agreement are not intended to negate any specific rights granted to the Company or any other Grantor in the Term Loan Credit Documents or the Working Capital Credit Documents.

8.2. Effectiveness; Continuing Nature of this Agreement; Severability. This Agreement shall become effective when executed and delivered by the parties hereto. This is a continuing agreement of lien subordination and the Working Capital Claimholders and the Term Loan Claimholders may each continue, at any time and without notice to the other Claimholders, to extend credit and other financial accommodations and lend monies to or for the benefit of the Company or any Grantor constituting Working Capital Obligations or Term Loan Obligations, as applicable, in reliance hereof. The terms of this Agreement shall survive, and shall continue in full force and effect, in any Insolvency or Liquidation Proceeding. Any provision of this Agreement which is prohibited or unenforceable in any jurisdiction shall not invalidate the remaining provisions hereof, and any such prohibition or unenforceability in any jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. All references to the Company or any other Grantor shall include the Company or such Grantor as debtor and debtor-in-possession and any receiver or trustee for the Company or any other Grantor (as the case may be) in any Insolvency or Liquidation Proceeding. This Agreement shall terminate and be of no further force and effect upon the Discharge of Working Capital Obligations or the Discharge of Term Loan Obligations (in accordance with the provisions hereof), except for Sections 5.7 and 7.5 and the provisions of this Section 8 as they relate to Sections 5.7 and 7.5, and subject to reinstatement in accordance with Section 6.7.

8.3. Amendments; Waivers. No amendment, modification or waiver of any of the provisions of this Agreement by the Working Capital Agent or the Term Loan Agent or (subject to the following sentence) the Company or any other Grantor, shall be deemed to be made unless the same shall be in writing signed on behalf of each party hereto or its authorized agent and each waiver, if any, shall be a waiver only with respect to the specific instance involved and shall in no way impair the rights of the parties making such waiver or the obligations of the other parties to such party in any other respect or at any other time. Notwithstanding the foregoing, neither the Company nor any other Grantor shall have any right to consent to or approve any amendment, modification or waiver of any provision of this Agreement except to the extent its rights or obligations are directly affected; provided any amendment, modification or waiver of any provision of this Agreement that would have the effect, directly or indirectly, through any reference in any Credit Document to this Agreement or otherwise, of waiving, amending, supplementing or otherwise modifying any Credit Document, or any term or provision thereof,

or any right or obligation of the Company or any other Grantor thereunder or in respect thereof, shall not be given such effect except pursuant to a written instrument executed by the Company and each other affected Grantor.

8.4. Information Concerning Financial Condition of Company and its Subsidiaries. The Term Loan Agent and the Term Loan Claimholders, and the Working Capital Agent and the Working Capital Claimholders, respectively, shall each be responsible for keeping themselves informed of (a) the financial condition of Company and its Subsidiaries and all endorsers or guarantors of the Term Loan Obligations or the Working Capital Obligations and (b) all other circumstances bearing upon the risk of nonpayment of the Term Loan Obligations or the Working Capital Obligations. Each Agent and the Claimholders for which it acts as Agent shall have no duty to advise any other Agent or any Claimholder for which any other Agent acts as Agent of information known to it or them regarding such condition or any such circumstances or otherwise. In the event that any Agent or any of the Claimholders for which it acts as Agent, in its or their sole discretion, undertakes at any time or from time to time to provide any such information to any other Agent or any Claimholder for which such other Agent acts as Agent, it or they shall be under no obligation (w) to make, and such party shall not make, any express or implied representation or warranty, including with respect to the accuracy, completeness, truthfulness or validity of any such information so provided, (x) to provide any additional information or to provide any such information on any subsequent occasion, (y) to undertake any investigation or (z) to disclose any information which, pursuant to accepted or reasonable commercial finance practices, such party wishes to maintain confidential or is otherwise required to maintain confidential.

8.5. Subrogation. Each Agent, for itself and on behalf of the Claimholders for which it acts as Agent, hereby waives any rights of subrogation it may acquire as a result of any payment hereunder until the Discharge of Obligations has occurred with respect to each other group of Claimholders**.**

8.6. Notice of Agent Change. Until an Agent (other than the existing Term Loan Agent) receives written notice from the existing Term Loan Agent, in accordance with Section 8.8 of this Agreement, of a change in the identity of the Term Loan Agent, such Agent shall be entitled to act as if the existing Term Loan Agent is in fact the Term Loan Agent. Each Agent (other than the existing Term Loan Agent) shall be entitled to rely upon any written notice of a change in the identity of the Term Loan Agent which facially appears to be from the then existing Term Loan Agent and is delivered in accordance with Section 8.8 and such Agent shall not be required to inquire into the veracity or genuineness of such notice. Each existing Term Loan Agent from time to time agrees to give prompt written notice to each Agent of any change in the identity of the Term Loan Agent.

(b) Until an Agent (other than the existing Working Capital Agent) receives written notice from the existing Working Capital Agent, in accordance with Section 8.8 of this Agreement, of a change in the identity of the Working Capital Agent, such Agent shall be entitled to act as if the existing Working Capital Agent is in fact the Working Capital Agent. Each Agent (other than the existing Working Capital Agent) shall be entitled to rely upon any written notice of a change in the identity of the Working Capital Agent which facially appears to be from the then existing Working Capital Agent and is delivered in accordance with Section

8.8 and such Agent shall not be required to inquire into the veracity or genuineness of such notice. Each existing Working Capital Agent from time to time agrees to give prompt written notice to each Agent of any change in the identity of the Working Capital Agent.

8.7. Governing Law; Choice of Forum; Service of Process; Jury Trial Waiver.

(a) This Agreement and the rights and obligations of the parties hereto under this Agreement shall be governed by and construed in accordance with the internal laws of the State of New York without giving effect to the rules or principles of conflict of laws thereof to the extent that the same are not mandatorily applicable by statute and would cause the application of the laws of any other jurisdiction.

(b) The parties hereto irrevocably consent and submit to the non-exclusive jurisdiction of the courts of the State of New York sitting in New York County, New York and the United States District Court of the Southern District of New York, whichever the Agents may elect, and to the fullest extent permitted by law, waive any objection based on venue or forum non conveniens with respect to any action instituted therein arising under this Agreement or any of the other Credit Document and agree that any dispute with respect to any such matters shall be heard only in the courts described above (except that the Agents and the Claimholders reserve the right to bring any action or proceeding against any Grantor or its or their property in the courts of any other jurisdiction which such Agent or Claimholder deems necessary or appropriate in order to realize on the Collateral or to otherwise enforce its rights against any Grantor or its or their property).

(c) Each Grantor to the fullest extent permitted by law hereby waives personal service of any and all process upon it and consents that all such service of process may be made by certified mail (return receipt requested) directed to its address set forth herein and service so made shall be deemed to be completed five (5) days after the same shall have been so deposited in the U.S. mails, or, at the Agents' option, by service upon any Grantor in any other manner provided under the rules of any such courts.

(d) EACH PARTY HERETO HEREBY WAIVES ANY RIGHT TO TRIAL BY JURY OF ANY CLAIM, DEMAND, ACTION OR CAUSE OF ACTION ARISING UNDER THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS OR IN ANY WAY CONNECTED WITH OR RELATED OR INCIDENTAL TO THE DEALINGS OF THE PARTIES HERETO IN RESPECT OF THIS AGREEMENT OR ANY OF THE OTHER CREDIT DOCUMENTS OR THE TRANSACTIONS RELATED HERETO OR THERETO IN EACH CASE WHETHER NOW EXISTING OR HEREAFTER ARISING, AND WHETHER IN CONTRACT, TORT, EQUITY OR OTHERWISE. EACH PARTY HERETO HEREBY AGREES AND CONSENTS THAT ANY SUCH CLAIM, DEMAND, ACTION OR CAUSE OF ACTION SHALL BE DECIDED BY COURT TRIAL WITHOUT A JURY AND THAT ANY PARTY HERETO MAY FILE AN ORIGINAL COUNTERPART OF A COPY OF THIS AGREEMENT WITH ANY COURT AS WRITTEN EVIDENCE OF THE CONSENT OF THE PARTIES HERETO TO THE WAIVER OF THEIR RIGHT TO TRIAL BY JURY.

(e) The Agents and Claimholders shall not have any liability to any Grantor (whether in tort, contract, equity or otherwise) for losses suffered by such Grantor in connection with, arising out of, or in any way related to the transactions or relationships contemplated by this Agreement, or any act, omission or event occurring in connection herewith, except to the extent it is determined by a final and non-appealable judgment or court order binding on the applicable Agent and Claimholders that the losses were the result of acts or omissions constituting gross negligence or willful misconduct. Each Grantor: (i) certifies that neither the Agents, the Claimholders nor any representative, agent or attorney acting for or on behalf of the Agents or the Claimholders has represented, expressly or otherwise, that the Agents and the Claimholders would not, in the event of litigation, seek to enforce any of the waivers provided for in this Agreement or any of the other Credit Documents and (ii) acknowledges that in entering into this Agreement and the other Credit Documents, the Agents and the Claimholders are relying upon, among other things, the waivers and certifications set forth in this Section 8.7 and elsewhere herein and therein.

8.8. Notices. All notices to the Term Loan Claimholders and the Working Capital Claimholders permitted or required under this Agreement shall also be sent to the Working Capital Agent and the Term Loan Agent, respectively. Unless otherwise specifically provided herein, any notice or other communication herein required or permitted to be given shall be in writing and may be personally served, electronically mailed or sent by courier service or U.S. mail and shall be deemed to have been given when delivered in person or by courier service, upon receipt of electronic mail or four Business Days after deposit in the U.S. mail (registered or certified, with postage prepaid and properly addressed). For the purposes hereof, the addresses of the parties hereto shall be as set forth below each party's name on the signature pages hereto, or, as to each party, at such other address as may be designated by such party in a written notice to all of the other parties.

8.9. Further Assurances. The Working Capital Agent, on behalf of itself and the Working Capital Claimholders, the Term Loan Agent, on behalf of itself and the Term Loan Claimholders, and the Grantors, agree that each of them shall take such further action and shall execute and deliver such additional documents and instruments (in recordable form, if requested) as the Working Capital Agent or the Term Loan Agent may reasonably request to effectuate the terms of and the lien priorities contemplated by this Agreement.

8.10. Binding on Successors and Assigns. This Agreement shall be binding upon the Working Capital Agent, the other Working Capital Claimholders, the Term Loan Agent, the other Term Loan Claimholders, the Grantors, and their respective successors and assigns.

8.11. Specific Performance. Each Agent may demand specific performance of this Agreement. Each Agent, on behalf of itself and the Claimholders for which it acts as Agent, hereby irrevocably waives any defense based on the adequacy of a remedy at law and any other defense which might be asserted to bar the remedy of specific performance in any action which may be brought by any other Agent.

8.12. Headings. Section headings in this Agreement are included herein for convenience of reference only and shall not constitute a part of this Agreement for any other purpose or be given any substantive effect.

8.13. Counterparts. This Agreement may be executed in counterparts (and by different parties hereto in different counterparts), each of which shall constitute an original, but all of which when taken together shall constitute a single contract. Delivery of an executed counterpart of a signature page of this Agreement or any document or instrument delivered in connection herewith by telecopy shall be effective as delivery of a manually executed counterpart of this Agreement or such other document or instrument, as applicable.

8.14. Authorization. By its signature, each Person executing this Agreement on behalf of a party hereto represents and warrants to the other parties hereto that it is duly authorized to execute this Agreement.

8.15. No Third Party Beneficiaries. This Agreement and the rights and benefits hereof shall inure to the benefit of each of the parties hereto and its respective successors and assigns and shall inure to the benefit of each of the Working Capital Agent, the other Working Capital Claimholders, the Term Loan Agent, the other Term Loan Claimholders, and the Company and the other Grantors. No other Person shall have or be entitled to assert rights or benefits hereunder.

8.16. Provisions Solely to Define Relative Rights. The provisions of this Agreement are and are intended solely for the purpose of defining the relative rights of the Working Capital Claimholders and the Term Loan Claimholders, respectively. Nothing in this Agreement is intended to or shall impair the rights of Company or any other Grantor, or the obligations of Company or any other Grantor to pay the Working Capital Obligations and the Term Loan Obligations as and when the same shall become due and payable in accordance with their terms.

8.17. Future Grantors. Any Domestic Subsidiary of the Company from time to time party to a Credit Document shall become a "Grantor" hereunder for all purposes of this Agreement upon execution and delivery by such Domestic Subsidiary of a customary joinder agreement in form and substance reasonably acceptable to Working Capital Agent and Term Loan Agent.

[Signature Pages Follow]

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

WELLS FARGO CAPITAL FINANCE LLC,
as Working Capital Agent and Working Capital Administrative Agent

By: _____
Name: _____
Title: _____

Notice Address:

10 South Wacker Drive, 13th Floor
Chicago, Illinois 60606
Attn: Portfolio Manager—Boomerang
Fax No. (312) 332-0424

with a copy to:

GOLDBERG KOHN LTD.
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603
Attn: Gary T. Zussman
Fax No. (312) 332-2196

CORTLAND CAPITAL MARKET SERVICES, LLC
as Term Loan Agent and Term Loan Administrative Agent

By: _____
Name: _____
Title: _____

Notice Address:

_____
_____
_____
_____
_____

with a copy to:

_____
_____
_____
_____

BOOMERANG TUBE, LLC.,
a Delaware limited liability company

By: _____
Name: _____
Title: _____

BTCSP, LLC, a Delaware limited liability company

By:_____
Name:_____
Title:_____
_

BT FINANCING, INC., a Delaware corporation

By:_____
Name:_____
Title:_____

Notice Address:

14567 North Outer Forty Drive, 5th Floor
Chesterfield, Missouri 63017
Attn: General Counsel or Chief Financial Officer
Fax No. (636) 534-5657

with a copy to:

Attn:
Fax No.

EXHIBIT 3

Exit Term Facility Loan Agreement

$60,000,000

TERM CREDIT AGREEMENT

among

BOOMERANG TUBE, LLC
as Borrower,

THE LENDERS
FROM TIME TO TIME PARTIES HERETO

and

CORTLAND CAPITAL MARKET SERVICES LLC
as Administrative Agent and Collateral Agent,

dated as of [_____], 2015

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TERM CREDIT AGREEMENT, dated as of [_____], 2015, among BOOMERANG TUBE, LLC (the "Borrower"), a Delaware limited liability company, the several banks and other financial institutions from time to time party hereto (as further defined in Subsection 1.1, the "Lenders"), CORTLAND CAPITAL MARKET SERVICES LLC, as administrative agent (in such capacity and as further defined in Subsection 1.1, the "Administrative Agent") for the Lenders hereunder and as collateral agent (in such capacity and as further defined in Subsection 1.1, the "Collateral Agent") for the Secured Parties (as defined below).

The parties hereto hereby agree as follows:

W I T N E S S E T H :

WHEREAS, the Borrower has requested the Lenders to extend credit to the Borrower in form of Term Loans on the Closing Date, in an aggregate principal amount not in excess of $60,000,000, for the purposes set forth herein;

WHEREAS, the Lenders have agreed to make the requested Term Loans available on the terms and conditions set forth herein; and

WHEREAS, this Agreement is the "Exit Term Facility Loan Agreement" referenced in that certain Debtors' Second Amended Joint Prearranged Chapter 11 Plan dated September 4, 2015, of the Bankruptcy Code for Boomerang Tube, LLC, et al., filed in the bankruptcy case (the "Bankruptcy Case") of Boomerang Tube, LLC, et al. in the United States Bankruptcy Court for the District of Delaware (Case No. 15-11247 (MFW)) (the "Plan of Reorganization").

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1

Definitions

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

"ABL Agent": Wells Fargo Capital Finance, LLC, in its capacity as agent for the lenders under the ABL Facility Documents, or any successor agent under the ABL Facility Documents.

"ABL Credit Agreement": the Credit Agreement, dated as of [_____], among the Borrower, the banks and other financial institutions party thereto from time to time as lenders and Wells Fargo Capital Finance, LLC, as agent thereunder, as such agreement may be amended, restated, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time, in each case to the extent not prohibited by the terms of the ABL/Term Loan Intercreditor Agreement (whether

in whole or in part, whether with the original administrative agent and lenders or other agents and lenders or otherwise, and whether provided under the original ABL Credit Agreement or one or more other credit agreements or otherwise, unless such agreement, instrument or other document expressly provides that it is not intended to be and is not an ABL Credit Agreement). Any reference to the ABL Credit Agreement hereunder shall be deemed a reference to each ABL Credit Agreement then in existence.

"ABL Facility": the collective reference to the ABL Credit Agreement, any ABL Facility Documents, any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original agents and lenders or other agents and lenders or otherwise, and whether provided under the original ABL Credit Agreement or one or more other credit agreements, indentures or financing agreements or otherwise, unless such agreement, instrument or document expressly provides that it is not intended to be and is not a ABL Facility), in each case to the extent not prohibited by Subsection 8.8(b) or the terms of the ABL/Term Loan Intercreditor Agreement. Without limiting the generality of the foregoing, the term "ABL Facility" shall include any agreement (i) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (ii) adding Subsidiaries of the Borrower as additional borrowers or guarantors thereunder, (iii) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (iv) otherwise altering the terms and conditions thereof, in each case to the extent not prohibited Subsection 8.8(b) or by the terms of the ABL/Term Loan Intercreditor Agreement.

"ABL Facility Documents": the "Loan Documents" as defined in the ABL Credit Agreement, as the same may be amended, restated, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced to the extent not prohibited by the terms of the ABL/Term Loan Intercreditor Agreement.

"ABL Indebtedness": the Indebtedness under the ABL Facility.

"ABL Priority Collateral": the "Working Capital Priority Collateral" as defined in the ABL/Term Loan Intercreditor Agreement.

"ABL/Term Loan Intercreditor Agreement": the Intercreditor Agreement, dated as of the date hereof, among the Agents and the ABL Agent (in its capacity as agent under the ABL Facility Documents), and acknowledged by the Loan Parties, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

"ABR": when used in reference to any Loan or Borrowing, is used when such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"ABR Loans": Loans to which the rate of interest applicable is based upon the Alternate Base Rate.

"Acceleration": as defined in Subsection 9.1(e).

"Access Management Agreement": the Second Amended and Restated Management Consulting Agreement, dated as of June 8, 2015, by and between the Borrower and Access Tubulars.

"Acquired Indebtedness": Indebtedness of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case other than Indebtedness Incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be Incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

"Acquisition Indebtedness": Indebtedness of (A) the Borrower or any Restricted Subsidiary Incurred to finance or refinance, or otherwise Incurred in connection with, any acquisition of any assets (including Capital Stock), business or Person, or any merger or consolidation of any Person with or into the Borrower or any Restricted Subsidiary, or (B) any Person that is acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary Incurred in connection with any such acquisition, merger or consolidation.

"Additional Assets": (i) any property or assets that replace the property or assets that are the subject of an Asset Disposition; (ii) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Borrower or a Restricted Subsidiary or otherwise useful in a Related Business, and any capital expenditures in respect of any property or assets already so used; (iii) the Capital Stock of a Person that is engaged in a Related Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Borrower or another Restricted Subsidiary; or (iv) Capital Stock of any Person that at such time is a Restricted Subsidiary acquired from a third party.

"Additional Indebtedness": any Indebtedness that is (a) incurred by the Borrower in compliance with Subsection 8.1 hereof and the relevant covenant restricting indebtedness in the ABL Credit Agreement and (b) secured by a Lien in compliance with Subsection 8.6 hereof and the relevant negative covenant restricting liens in the ABL Credit Agreement, which Indebtedness shall be designated by the Borrower under the ABL/Term Loan Intercreditor Agreement.

"Additional Lender": as defined in Subsection 2.6(b).

"Additional Obligations": senior or subordinated Indebtedness (which Indebtedness may be (x) secured by a Lien ranking pari passu to the Lien securing the First Lien Obligations, (y) secured by a Lien ranking junior to the Lien securing the First Lien Obligations or (z) unsecured), including customary bridge financings, in each case issued or incurred by the Borrower or a Guarantor, the terms of which Indebtedness (i) do not provide for a maturity date or weighted average life to maturity earlier than the Maturity Date of the Term Loans or shorter than the weighted average life to maturity of the Term Loans, as the case may be (other than an

earlier maturity date and/or shorter weighted average life to maturity for customary bridge financings, which, subject to customary conditions, would either be automatically converted into or required to be exchanged for permanent financing which does not provide for an earlier maturity date or a shorter weighted average life to maturity than the Maturity Date of the Term Loans or the weighted average life to maturity of the Term Loans, as applicable), (ii) to the extent such Indebtedness is subordinated, provide for customary payment subordination to the Term Loan Facility Obligations under the Loan Documents as reasonably determined by the Borrower in good faith and (iii) do not provide for any mandatory repayment or redemption from asset sales, casualty or condemnation events or excess cash flow on more than a ratable basis with the Term Loans (after giving effect to any amendment in accordance with Subsection 11.1(d)(v)); provided that (a) such Indebtedness shall not be secured by any Lien on any asset of any Loan Party that does not also secure the Term Loan Facility Obligations, or be guaranteed by any Person other than the Guarantors, and (b) if secured by Collateral, such Indebtedness (and all related Obligations) shall be subject to the terms of the ABL/Term Loan Intercreditor Agreement (if such Indebtedness and related Obligations constitute Term Loan Facility Obligations), any Junior Lien Intercreditor Agreement (if such Indebtedness and related Obligations are to be secured by a lien junior to the Term Loan Facility Obligations) or an Other Intercreditor Agreement (if otherwise agreed by the Administrative Agent and the Borrower).

"Additional Obligations Documents": any document or instrument (including any guarantee, security agreement or mortgage and which may include any or all of the Loan Documents) issued or executed and delivered with respect to any Additional Obligations by any Loan Party.

"Adjusted LIBOR Rate": with respect to any Borrowing of Eurodollar Loans for any Interest Period, an interest rate per annum determined by the Administrative Agent to be equal to (a) the LIBOR Rate for such Borrowing of Eurodollar Loans in effect for such Interest Period divided by (b) 1 minus the Eurodollar Reserve Percentage; provided that the Adjusted LIBOR Rate shall not be less than 0%.

"Administrative Agency Fee Letter": the letter agreement dated as of the date hereof between the Borrower and the Administrative Agent.

"Administrative Agent": as defined in the Preamble hereto and shall include any successor to the Administrative Agent appointed pursuant to Subsection 10.6.

"Administrative Agent's Office": the Administrative Agent's address and, as appropriate, account as set forth in Subsection 11.2, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Affected Loans": as defined in Subsection 4.9.

"Affiliate": as applied to any Person, any other Person who Controls, is Controlled by, or is under common Control with, such Person; provided, however, that, for purposes of Subsection 8.5 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Capital Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other

ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Affiliate Transaction": as defined in Subsection 8.5(a).

"Agent Parties": as defined in Subsection 11.2(e).

"Agents": the collective reference to the Administrative Agent and the Collateral Agent and "Agent" shall mean any of them.

"Agreement": this Credit Agreement, as amended, restated, supplemented, waived or otherwise modified, from time to time.

"Alternate Base Rate": for any day, a rate per annum equal to the highest of (i) the Base Rate for such day, (ii) the sum of 0.50% plus the Federal Funds Effective Rate for such day and (iii) the LIBOR Rate (determined by reference to clause (ii) of the definition thereof) plus 1.00%; provided that the Alternate Base Rate shall not be less than 0%.

"Amendment": as defined in Subsection 8.3(c).

"Applicable Margin": 15.00% per annum.

"Approved Fund": as defined in Subsection 11.6(b).

"Asset Disposition": any sale, lease, transfer or other disposition of shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares, or (in the case of a Foreign Subsidiary) to the extent required by applicable law), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Borrower or any of its Restricted Subsidiaries (including any disposition by means of a merger, consolidation or similar transaction) other than (i) a disposition to the Borrower or a Restricted Subsidiary, (ii) a disposition in the ordinary course of business, (iii) a disposition of Cash Equivalents, Investment Grade Securities or Temporary Cash Investments, (iv) the sale or discount (with or without recourse, and on customary or commercially reasonable terms) of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable, but only in connection with the compromise or collection thereof, (v) any Restricted Payment Transaction, (vi) [reserved], (vii) [reserved], (viii) any "fee in lieu" or other disposition of assets to any Governmental Authority that continue in use by the Borrower or any Restricted Subsidiary, so long as the Borrower or any Restricted Subsidiary may obtain title to such assets upon reasonable notice by paying a nominal fee, (ix) any exchange of property pursuant to or intended to qualify under Section 1031 (or any successor section) of the Code, or any exchange of equipment to be leased, rented or otherwise used in a Related Business, (x) [reserved], (xi) any disposition arising from foreclosure, condemnation or similar action with respect to any property or other assets, or exercise of termination rights under any lease, license, concession or other agreement, or necessary or advisable (as determined by the Borrower in good faith) in order to consummate any acquisition of any Person, business or assets, or pursuant to buy/sell arrangements under any joint venture or similar agreement or

arrangement, (xii) any disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary, (xiii) a disposition of Capital Stock of a Restricted Subsidiary pursuant to an agreement or other obligation with or to a Person (other than the Borrower or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), entered into in connection with such acquisition, (xiv) any disposition or series of related dispositions for aggregate consideration not to exceed $500,000 per year, (xv) the abandonment or other disposition of patents, trademarks or other intellectual property that are, in the reasonable judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and its Subsidiaries taken as a whole and so long as such abandonment or other disposition is not, in the good faith determination of the Borrower, materially adverse to the interests of the Lenders, or (xvi) any non-exclusive license, sublicense or other grant of right-to-use of any trademark, copyright, patent or other intellectual property.

"Assignee": as defined in Subsection 11.6(b)(i).

"Assignment and Acceptance": an Assignment and Acceptance, substantially in the form of Exhibit E hereto.

"Bank Products Agreement": (1) any agreement pursuant to which a bank or other financial institution agrees to provide (a) treasury services, (b) credit card, merchant card, purchasing card or stored value card services (including, without limitation, the processing of payments and other administrative services with respect thereto), (c) cash management services (including, without limitation, controlled disbursements, automated clearinghouse transactions, return items, netting, overdrafts, depository, lockbox, stop payment, electronic funds transfer, information reporting, wire transfer and interstate depository network services) and (d) other banking products or services as may be requested by any Restricted Subsidiary (other than letters of credit and other than loans and advances except indebtedness arising from services described in clauses (a) through (c) of this definition) and (2) any "Bank Products Agreement" as defined in the ABL/Term Loan Intercreditor Agreement.

"Bank Products Bank": any Person that, at the time it enters into a Bank Products Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Bank Products Agreement.

"Bank Products Obligations": of any Person means the obligations of such Person pursuant to any Bank Products Agreement.

"Bankruptcy Case": as defined in the recitals to this Agreement.

"Base Rate": for any day, the rate of interest per annum quoted in *The Wall Street Journal*, Money Rates Section as the "prime rate" in effect from time to time (or if such rate is at any time not available, the prime rate so quoted by any banking institution selected by the Administrative Agent), which rate is not intended to be the lowest rate charged by any such banking institution to its borrowers.

"Board": the Board of Governors of the Federal Reserve System.

"Board of Directors": for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of the Borrower.

"Borrower": as defined in the Preamble hereto.

"Borrower Materials": as defined in Subsection 7.2.

"Borrowing": the borrowing of one Type of Loans of a given Tranche from all the Lenders having Initial Term Loan Commitments or other commitments under such Tranche, as the case may be, on a given date (or resulting from a conversion or conversions on such date) having, in the case of Eurodollar Loans, the same Interest Period.

"Borrowing Base": the sum of (1) 70.0% of the book value of Inventory of the Borrower and its Restricted Subsidiaries and (2) 85.0% of the book value of Receivables of the Borrower and its Restricted Subsidiaries (in each case, determined as of the end of the most recently ended fiscal month or quarter of the Borrower for which financial statements have been (or are required to have been) delivered under Subsection 7.1(a) or 7.1(b), and, in the case of any determination relating to any Incurrence of Indebtedness, on a pro forma basis including (x) any property or assets of a type described above acquired since the end of such fiscal month or quarter and (y) any property or assets of a type described above being acquired in connection therewith.

"Borrowing Date": any Business Day specified in a notice pursuant to Subsection 2.3 or 2.4 as a date on which the Borrower requests the Lenders to make Loans hereunder.

"Business Day": any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent's Office is located, except that, if such day relates to any Eurodollar Loan, such day shall also be a London Banking Day.

"Capital Expenditures": for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under leases evidencing Capitalized Lease Obligations) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on a consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

"Capital Stock": with respect to any Person, any and all of the shares of capital stock of (or other ownership or profit interests in) such Person, any and all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, any and all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and any and all of the other ownership or profit interests in such

Person (including partnership, member or trust interests therein and including Preferred Stock), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Capitalized Lease Obligation": an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP. The Stated Maturity of any Capitalized Lease Obligation shall be the date of the last payment of rent or any other amount due under the related lease.

"Captive Insurance Subsidiary": any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

"Cash Equivalents": any of the following: (a) money, (b) securities issued or fully guaranteed or insured by the United States of America or a member state of the European Union or any agency or instrumentality of any thereof, (c) time deposits, certificates of deposit or bankers' acceptances of (i) any bank or other institutional lender under this Agreement or the ABL Facility or any affiliate thereof or (ii) any commercial bank having capital and surplus in excess of $500,000,000 (or the foreign currency equivalent thereof as of the date of such investment) and the commercial paper of the holding company of which is rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's (or if at such time neither is issuing ratings, then a comparable rating of another nationally recognized rating agency), (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above, (e) money market instruments, commercial paper or other short-term obligations rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's (or if at such time neither is issuing ratings, then a comparable rating of another nationally recognized rating agency) issued by any Person not an Affiliate of the Borrower, (f) investments in money market funds subject to the risk limiting conditions of Rule 2a-7 or any successor rule of the SEC under the Investment Company Act of 1940, as amended, (g) investments similar to any of the foregoing denominated in foreign currencies approved by the Board of Directors, but not exceeding in the aggregate at any time 10.0% of the aggregate Fair Market Value of the Cash Equivalents of the Borrower and its Restricted Subsidiaries, and (h) solely with respect to any Captive Insurance Subsidiary, any investment that person is permitted to make in accordance with applicable law.

"Change in Law": as defined in Subsection 4.11(a).

"Change of Control: (a) Permitted Holders fail to own and control, directly or indirectly, 60.0%, or more, of the Capital Stock of Borrower having the right to vote for the election of members of the Board of Directors, (b) Borrower fails to own and control, directly or indirectly, 100% of the Capital Stock of each other Loan Party, (c) a "Change of Control" as defined in the ABL Credit Agreement has occurred, or (d) a "Change of Control" as defined in the Subordinated Notes Agreement has occurred.

"Closing Date": the date on which all the conditions precedent set forth in Subsection 6.1 shall be satisfied or waived.

"Code": the Internal Revenue Code of 1986, as amended from time to time.

"Collateral": all assets of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

"Collateral Agent": as defined in the Preamble hereto and shall include any successor to the Collateral Agent appointed pursuant to Subsection 10.6.

"Committed Loan Notice": a notice of (i) a Borrowing, (ii) a conversion of Term Loans from one Type to the other or (iii) a continuation of Eurodollar Loans, pursuant to Subsection 4.2, which shall be substantially in the form of Exhibit L.

"Commodities Agreement": in respect of a Person, any commodity futures contract, forward contract, option or similar agreement or arrangement (including derivative agreements or arrangements), as to which such Person is a party or beneficiary.

"Commonly Controlled Entity": an entity, whether or not incorporated, which is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group which includes the Borrower and which 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 Sections 414(m) and (o) of the Code.

"Compliance Certificate": as defined in Subsection 7.2(b).

"Confirmation Order": as defined in Subsection 6.1(b).

"Consolidated Coverage Ratio": as of any date of determination, the ratio of (i) the aggregate amount of Consolidated EBITDA for the Most Recent Four Quarter Period to (ii) Consolidated Interest Expense for such Most Recent Four Quarter Period; provided that

(1) if, since the beginning of such period, the Borrower or any Restricted Subsidiary has Incurred any Indebtedness that remains outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period (except that in making such computation, the amount of Indebtedness under any revolving credit facility outstanding on the date of such calculation shall be computed based on (A) the average daily balance of such Indebtedness during such four fiscal quarters or such shorter period for which such facility was outstanding or (B) if such facility was created after the end of such four fiscal quarters, the average daily balance of such Indebtedness during the period from the date of creation of such facility to the date of such calculation),

(2) if, since the beginning of such period, the Borrower or any Restricted Subsidiary has repaid, repurchased, redeemed, defeased or otherwise acquired, retired or discharged any Indebtedness that is no longer outstanding on such date of determination (each, a "Discharge") or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio involves a Discharge of Indebtedness (in each case other than Indebtedness Incurred under

any revolving credit facility unless such Indebtedness has been permanently repaid), Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Discharge of such Indebtedness, including with the proceeds of such new Indebtedness, as if such Discharge had occurred on the first day of such period,

(3) if, since the beginning of such period, the Borrower or any Restricted Subsidiary shall have disposed of any company, any business or any group of assets constituting an operating unit of a business (any such disposition, a "Sale"), the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets that are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to (A) the Consolidated Interest Expense attributable to any Indebtedness of the Borrower or any Restricted Subsidiary repaid, repurchased, redeemed, defeased or otherwise acquired, retired or discharged with respect to the Borrower and its continuing Restricted Subsidiaries in connection with such Sale for such period (including but not limited to through the assumption of such Indebtedness by another Person) plus (B) if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period attributable to the Indebtedness of such Restricted Subsidiary to the extent the Borrower and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such Sale,

(4) if, since the beginning of such period, the Borrower or any Restricted Subsidiary (by merger, consolidation or otherwise) shall have made an Investment in any Person that thereby becomes a Restricted Subsidiary, or otherwise acquired any company, any business or any group of assets constituting an operating unit of a business, including any such Investment or acquisition occurring in connection with a transaction causing a calculation to be made hereunder (any such Investment or acquisition, a "Purchase"), Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any related Indebtedness) as if such Purchase occurred on the first day of such period, and

(5) if, since the beginning of such period, any Person became a Restricted Subsidiary or was merged or consolidated with or into the Borrower or any Restricted Subsidiary, and since the beginning of such period such Person shall have Discharged any Indebtedness or made any Sale or Purchase that would have required an adjustment pursuant to clause (2), (3) or (4) above if made by the Borrower or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Discharge, Sale or Purchase occurred on the first day of such period; and provided for purposes of the Incurrence of Indebtedness under Subsection 8.1(a) only, that (in the event that the Borrower shall classify Indebtedness Incurred on the date of determination as Incurred in part under Subsection 8.1(a) and in part under Subsection 8.1(b), as provided in Subsection 8.1(c)(iii)) any such pro forma calculation of Consolidated Interest Expense on such date of determination only shall not give effect to any such Incurrence of Indebtedness on the date of determination pursuant to Subsection 8.1(b) or to any Discharge of Indebtedness from the proceeds of any such Incurrence pursuant to such Subsection 8.1(b).

For purposes of this definition, whenever pro forma effect is to be given to any Sale, Purchase or other transaction, or the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred or repaid, repurchased, redeemed, defeased or otherwise acquired, retired or discharged in connection therewith, the pro forma calculations in respect thereof (including without limitation in respect of anticipated cost savings or synergies relating to any such Sale, Purchase or other transaction) shall be as determined in good faith by the Chief Financial Officer or a Responsible Officer of the Borrower; provided that with respect to cost savings or synergies relating to any Sale, Purchase or other transaction, the related actions are expected by the Borrower to be taken no later than 12 months after the date of determination (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected to have a continuing impact directly attributable to such Sale, Purchase or other transaction and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within 12 months after the consummation of such Sale, Purchase or other transaction, which is expected to result in such cost savings, expense reductions or synergies, and (ii) the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this proviso for any four consecutive quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this proviso)) (which adjustment shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated EBITDA", "Consolidated Secured Leverage Ratio" or "Consolidated Total Leverage Ratio"). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Hedge Agreement applicable to such Indebtedness). If any Indebtedness bears, at the option of the Borrower or a Restricted Subsidiary, a rate of interest based on a prime or similar rate, a eurocurrency interbank offered rate or other fixed or floating rate, and such Indebtedness is being given pro forma effect, the interest expense on such Indebtedness shall be calculated by applying such optional rate as the Borrower or such Restricted Subsidiary may designate. If any Indebtedness that is being given pro forma effect was incurred under a revolving credit facility, the interest expense on such Indebtedness shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate determined in good faith by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated EBITDA": for any period, the Consolidated Net Income for such period, plus (x) the following to the extent deducted in calculating such Consolidated Net Income, without duplication: (i) provision for all taxes (whether or not paid, estimated or accrued) based on income, profits or capital (including penalties and interest, if any), (ii) Consolidated Interest Expense, (iii) depreciation, (iv) amortization (including but not limited to amortization of goodwill and intangibles and amortization and write-off of financing costs), (v) any non-cash charges or non-cash losses (but excluding any non-cash charge or non-cash loss that relates to the write-down or write-off of Inventory or Receivables), (vi) any expenses or charges related to any equity offering, Investment or Indebtedness permitted by this Agreement (whether or not consummated or incurred, and including any offering or sale of Capital Stock to

the extent the proceeds thereof were intended to be contributed to the equity capital of the Borrower or its Restricted Subsidiaries), (vii) the amount of any minority interest expense consisting of items of income or gain attributable to non-controlling interests of third parties in non-Wholly Owned Restricted Subsidiaries, (viii) all deferred financing costs written off and premiums paid in connection with any early extinguishment of Hedging Obligations or other derivative instruments (ix) costs and expenses incurred in connection with the Bankruptcy Case and the Transactions, in an aggregate amount not to exceed $[_____] during the term of the Facility and (x) business optimization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, contract termination costs and costs to consolidate facilities and relocate employees) in an amount not to exceed (A) $[_____] in any four (4) consecutive quarter period and (B) $[_____] during the term of the Facility[1], plus (y) the amount of net cost savings projected by the Borrower in good faith to be realized as the result of actions taken or to be taken on or prior to the date that is twelve (12) months after the consummation of any operational change, and prior to or during such period (calculated on a pro forma basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings are reasonably expected to have a continuing impact directly attributable to such operational change and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within twelve (12) months after the consummation of such operational change, which is expected to result in such cost savings and (ii) that the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this clause (y) for any four consecutive quarter period shall not exceed ten-percent (10%) of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this clause (y))) (which adjustments shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated Coverage Ratio," "Consolidated Secured Leverage Ratio" or "Consolidated Total Leverage Ratio") minus (z) the amount of any minority interest income consisting of items of expense or loss attributable to non-controlling interests of third parties in non-Wholly Owned Restricted Subsidiaries.

"Consolidated Interest Expense": for any period, (i) the total interest expense of the Borrower and its Restricted Subsidiaries to the extent deducted in calculating Consolidated Net Income, net of any interest income of the Borrower and its Restricted Subsidiaries, including without limitation, any such interest expense consisting of (A) interest expense attributable to Capitalized Lease Obligations, (B) amortization of debt discount, (C) interest in respect of Indebtedness of any other Person that has been Guaranteed by the Borrower or any Restricted Subsidiary, but only to the extent that such interest is actually paid by the Borrower or any Restricted Subsidiary, (D) non-cash interest expense, (E) the interest portion of any deferred payment obligation, and (F) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, plus (ii) Preferred Stock dividends paid in cash in respect of Disqualified Stock of the Borrower held by Persons other than the Borrower or a Restricted Subsidiary, and minus (iii) to the extent otherwise included in such interest expense referred to in clause (i) above, amortization or write-off of financing costs, in

[1] Boomerang to provide basket amounts.

each case under clauses (i) through (iii) above as determined on a consolidated basis in accordance with GAAP; provided that gross interest expense shall be determined after giving effect to any net payments made or received by the Borrower and its Restricted Subsidiaries with respect to Interest Rate Agreements.

"Consolidated Net Income": for any period, the net income (loss) of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with GAAP and before any reduction in respect of Preferred Stock dividends; provided that there shall not be included in such Consolidated Net Income:

(i) any net income (loss) of any Person if such Person is not the Borrower or a Restricted Subsidiary, except that (A) the Borrower's or any Restricted Subsidiary's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount actually distributed by such Person during such period to the Borrower or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (ii) below) and (B) the Borrower's or any Restricted Subsidiary's equity in the net loss of such Person shall be included to the extent of the aggregate Investment of the Borrower or any of its Restricted Subsidiaries in such Person,

(ii) solely for purposes of determining Excess Cash Flow, any net income (or loss) of any Restricted Subsidiary that is not a Subsidiary Guarantor if such Restricted Subsidiary is subject to restrictions, directly or indirectly, on the payment of dividends or the making of similar distributions by such Restricted Subsidiary, directly or indirectly, to the Borrower by operation of the terms of such Restricted Subsidiary's charter or any agreement, instrument, judgment, decree, order, statute or governmental rule or regulation applicable to such Restricted Subsidiary or its stockholders (other than (x) restrictions that have been waived or otherwise released, (y) restrictions pursuant to this Agreement or the other Loan Documents, and (z) restrictions in effect on the Closing Date with respect to a Restricted Subsidiary and other restrictions with respect to such Restricted Subsidiary that taken as a whole are not materially less favorable to the Lenders than such restrictions in effect on the Closing Date as determined by the Borrower in good faith), except that (A) the Borrower's equity in the net income of any such Restricted Subsidiary for such period shall be included in such Consolidated Net Income up to the aggregate amount of any dividend or distribution that was or that could have been made by such Restricted Subsidiary during such period to the Borrower or another Restricted Subsidiary (subject, in the case of a dividend that could have been made to another Restricted Subsidiary, to the limitation contained in this clause (ii)) and (B) the net loss of such Restricted Subsidiary shall be included to the extent of the aggregate Investment of the Borrower or any of its other Restricted Subsidiaries in such Restricted Subsidiary,

(iii) (x) any gain or loss realized upon the sale, abandonment or other disposition of any asset of the Borrower or any Restricted Subsidiary (including pursuant to any sale/leaseback transaction) that is not sold, abandoned or otherwise disposed of in the ordinary course of business (as determined in good faith by the Board of Directors)

and (y) any gain or loss realized upon the disposal, abandonment or discontinuation of operations of the Borrower or any Restricted Subsidiary, and any income (loss) from disposed, abandoned or discontinued operations, including in each case any closure of any branch,

(iv) any extraordinary, unusual or nonrecurring gain, loss or charge (including fees, expenses and charges associated with the Transactions and any acquisition, merger or consolidation after the Closing Date),

(v) the cumulative effect of a change in accounting principles,

(vi) all deferred financing costs written off and premiums paid in connection with any early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments,

(vii) any unrealized gains or losses in respect of Hedge Agreements,

(viii) any unrealized foreign currency transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person,

(ix) any non-cash compensation charge arising from any grant of stock, stock options or other equity based awards,

(x) to the extent otherwise included in Consolidated Net Income, any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary owing to the Borrower or any Restricted Subsidiary,

(xi) any non-cash charge, expense or other impact attributable to application of the purchase or recapitalization method of accounting (including the total amount of depreciation and amortization, cost of sales or other non-cash expense resulting from the write-up of assets to the extent resulting from such purchase or recapitalization accounting adjustments), and

(xii) non-cash compensation related expenses.

In the case of any unusual or nonrecurring gain, loss or charge not included in Consolidated Net Income pursuant to clause (iv) above in any determination thereof, the Borrower will deliver a certificate of a Responsible Officer to the Administrative Agent promptly after the date on which Consolidated Net Income is so determined, setting forth the nature and amount of such unusual or nonrecurring gain, loss or charge.

"Consolidated Secured Indebtedness": as of any date of determination, (i) an amount equal to the Consolidated Total Indebtedness (without regard to clause (ii) of the definition thereof) as of such date that in each case is then secured by Liens on property or assets of the Borrower and its Restricted Subsidiaries (other than property or assets held in a defeasance

or similar trust or arrangement for the benefit of the Indebtedness secured thereby), minus (ii) Unrestricted Cash in an amount not to exceed $5,000,000.

"Consolidated Secured Leverage Ratio": as of any date of determination, the ratio of (i) Consolidated Secured Indebtedness as at such date (after giving effect to any Incurrence or Discharge of Indebtedness on such date) to (ii) the aggregate amount of Consolidated EBITDA for the Most Recent Four Quarter Period, provided that:

(1) if, since the beginning of such period, the Borrower or any Restricted Subsidiary shall have made a Sale, the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets that are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period;

(2) if, since the beginning of such period, the Borrower or any Restricted Subsidiary (by merger, consolidation or otherwise) shall have made a Purchase (including any Purchase occurring in connection with a transaction causing a calculation to be made hereunder), Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Purchase occurred on the first day of such period; and

(3) if, since the beginning of such period, any Person became a Restricted Subsidiary or was merged or consolidated with or into the Borrower or any Restricted Subsidiary, and since the beginning of such period such Person shall have made any Sale or Purchase that would have required an adjustment pursuant to clause (1) or (2) above if made by the Borrower or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Sale or Purchase occurred on the first day of such period; provided for purposes of Incurrence of Indebtedness under Subsection 8.1(b)(i)(IV) only, that (in the event that the Borrower shall classify Indebtedness Incurred on the date of determination as secured in part pursuant to clause (k)(1) of the "Permitted Liens" definition in respect of Indebtedness Incurred pursuant to Subsection 8.1(b)(i)(IV) and the Maximum Incremental Facilities Amount and in part pursuant to one or more other clauses of the definition of Permitted Liens, as provided in clause (z) of the final paragraph of such definition) any calculation of the Consolidated Secured Leverage Ratio on such date of determination only, including in the definition of "Maximum Incremental Facilities Amount", shall not include any such Indebtedness (and shall not give effect to any Discharge of Indebtedness from the proceeds thereof) to the extent secured pursuant to any such other clause of such definition.

For purposes of this definition, whenever pro forma effect is to be given to any Sale, Purchase or other transaction, or the amount of income or earnings relating thereto, the pro forma calculations in respect thereof (including, without limitation, in respect of anticipated cost savings or synergies relating to any such Sale, Purchase or other transaction) shall be as determined in good faith by the Chief Financial Officer or another Responsible Officer of the Borrower; provided that with respect to cost savings or synergies relating to any Sale, Purchase or other transaction, the related actions are expected by the Borrower to be taken no later than twelve (12) months after the date of determination (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent,

certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected to have a continuing impact directly attributable to such Sale, Purchase or other transaction and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within twelve (12) months after the consummation of such Sale, Purchase or other transaction, which is expected to result in such cost savings, expense reductions or synergies, and (ii) that the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this proviso for any four consecutive quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this proviso)) (which adjustment shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated Coverage Ratio", "Consolidated EBITDA" or "Consolidated Total Leverage Ratio").

"Consolidated Total Assets": as of any date of determination, the total assets in each case of the Borrower and its Restricted Subsidiaries as at the end of the most recently ended fiscal quarter of the Borrower for which such financial statements of the Borrower and its Restricted Subsidiaries are available, determined on a consolidated basis in accordance with GAAP (and, in the case of any determination relating to any Incurrence of Indebtedness or any Investment, on a pro forma basis including any property or assets being acquired in connection therewith).

"Consolidated Total Indebtedness": as of any date of determination, an amount equal to (i) the aggregate principal amount of outstanding Indebtedness of the Borrower and its Restricted Subsidiaries as of such date consisting of (without duplication) Indebtedness for borrowed money (including Purchase Money Obligations and unreimbursed outstanding drawn amounts under letters of credit); Capitalized Lease Obligations; debt obligations evidenced by bonds, debentures, notes or similar instruments; Disqualified Stock; and (in the case of any Restricted Subsidiary that is not a Subsidiary Guarantor) Preferred Stock (valued at the higher of its voluntary or involuntary liquidation value), determined on a consolidated basis in accordance with GAAP (excluding items eliminated in Consolidation, and for the avoidance of doubt, excluding Hedging Obligations); provided that the outstanding principal amount of the Subordinated Notes shall be excluded from the aggregate principal amount of outstanding Indebtedness of the Borrower and its Restricted Subsidiaries for the purpose of clause (i) of this definition; minus (ii) Unrestricted Cash in an amount not to exceed $5,000,000.

"Consolidated Total Leverage Ratio": as of any date of determination, the ratio of (i) Consolidated Total Indebtedness as at such date (after giving effect to any Incurrence or Discharge of Indebtedness on such date) to (ii) the aggregate amount of Consolidated EBITDA for the Most Recent Four Quarter Period, provided that:

(1) if, since the beginning of such period, the Borrower or any Restricted Subsidiary shall have made a Sale, the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets that are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period;

(2) if, since the beginning of such period, the Borrower or any Restricted Subsidiary (by merger, consolidation or otherwise) shall have made a Purchase (including

any Purchase occurring in connection with a transaction causing a calculation to be made hereunder), Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Purchase occurred on the first day of such period; and

(3) if, since the beginning of such period, any Person became a Restricted Subsidiary or was merged or consolidated with or into the Borrower or any Restricted Subsidiary, and since the beginning of such period such Person shall have made any Sale or Purchase that would have required an adjustment pursuant to clause (1) or (2) above if made by the Borrower or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Sale or Purchase occurred on the first day of such period; and provided that, for purposes of the foregoing calculation, in the event that the Borrower shall classify Indebtedness Incurred on the date of determination as Incurred in part pursuant to Subsection 8.1(b)(x) (other than by reason of subclause (2) of the proviso to such clause (x)) and in part pursuant to one or more other clauses of Subsection 8.1(b) and/or pursuant to Subsection 8.1(a) (as provided in Subsections 8.1(c)(ii) and (iii)), Consolidated Total Indebtedness on such date of determination shall not include any such Indebtedness Incurred pursuant to one or more such other clauses of Subsection 8.1(b) and/or pursuant to Subsection 8.1(a), and shall not give effect to any Discharge of any Indebtedness from the proceeds thereof that otherwise would be included in Consolidated Total Indebtedness.

For purposes of this definition, whenever pro forma effect is to be given to any Sale, Purchase or other transaction, or the amount of income or earnings relating thereto, the pro forma calculations in respect thereof (including, without limitation, in respect of anticipated cost savings or synergies relating to any such Sale, Purchase or other transaction) shall be as determined in good faith by the Chief Financial Officer or another Responsible Officer of the Borrower; provided that with respect to cost savings or synergies relating to any Sale, Purchase or other transaction, the related actions are expected by the Borrower to be taken no later than twelve (12) months after the date of determination (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected to have a continuing impact directly attributable to such Sale, Purchase or other transaction and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within twelve (12) months after the consummation of such Sale, Purchase or other transaction, which is expected to result in such cost savings, expense reductions or synergies, and (ii) that that the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this proviso for any four consecutive quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this proviso)) (which adjustment shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated Coverage Ratio," "Consolidated EBITDA" or "Consolidated Secured Leverage Ratio").

"Consolidated Working Capital": at any date, the excess of (a) the sum of all amounts (other than cash, Cash Equivalents and Temporary Cash Investments) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such

date excluding the current portion of current and deferred income taxes over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income taxes.

"Consolidation": the consolidation of the accounts of each of the Restricted Subsidiaries with those of the Borrower in accordance with GAAP; provided that "Consolidation" will not include consolidation of the accounts of any Unrestricted Subsidiary, but the interest of the Borrower or any Restricted Subsidiary in any Unrestricted Subsidiary will be accounted for as an investment. The term "Consolidated" has a correlative meaning.

"Contract Consideration": as defined in the definition of "Excess Cash Flow".

"Contractual Obligation": as to any Person, any provision of any material security issued by such Person or of any material agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control": 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 ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement": a control agreement, in form and substance reasonably satisfactory to the Collateral Agent, executed and delivered by Borrower or one of its Subsidiaries, Collateral Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Investment Affiliates": as to any Permitted Holder, (a) the controlling member, general partner, manager or investment manager and controlled affiliates of such Permitted Holder, (b) any fund or investment vehicle with the same general partner, manager or investment manager as such Permitted Holder or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager, and (c) any other Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Permitted Holder, the general partner of such Person, investment manager of such Person or controlled affiliate of such Person, general partner or investment manager.

"Cortland": Cortland Capital Market Services LLC, and its successors.

"Currency Agreement": in respect of a Person, any foreign exchange contract, currency swap agreement or other similar agreement or arrangements (including derivative agreements or arrangements), as to which such Person is a party or a beneficiary.

"Debtor Relief Law": the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium,

rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default": any of the events specified in Subsection 9.1, whether or not any requirement for the giving of notice (other than, in the case of Subsection 9.1(e), a Default Notice), the lapse of time, or both, or any other condition specified in Subsection 9.1, has been satisfied.

"Default Notice": as defined in Subsection 9.1(e).

"Defaulting Lender": subject to Subsection 2.9(b), any Lender that (i) has failed (A) to fund all or any portion of its Term Loans within two (2) Business Days of the date such Term Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the 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 (B) to pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two Business Days of the date when due, (ii) has notified the 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), (iii) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the 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 (iii) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (iv) has, or has a direct or indirect parent company that has, (A) become the subject of a proceeding under any Debtor Relief Law, or (B) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock 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 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 (i) through (iv) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Subsection 2.9(b)) as 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 Borrower and each other Lender promptly following such determination.

"Deposit Account": any deposit account (as such term is defined in Article 9 of the UCC).

"Designated Noncash Consideration": the Fair Market Value of noncash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Noncash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation.

"Designation Date": as defined in Subsection 2.8(f).

"Discharge": as defined in clause (2) of the definition of "Consolidated Coverage Ratio".

"Disqualified Stock": with respect to any Person, any Capital Stock (other than Management Stock that is common stock) that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (other than following the occurrence of a Change of Control or other similar event described under such terms as a "change of control" or an Asset Disposition) (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (ii) is convertible or exchangeable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof (other than following the occurrence of a Change of Control or other similar event described under such terms as a "change of control" or an Asset Disposition), in whole or in part, in each case on or prior to the date that is six (6) months after the Maturity Date; provided that Capital Stock issued to any employee benefit plan, or by any such plan to any employees of the Borrower or any Subsidiary, shall not constitute Disqualified Stock solely because it may be required to be repurchased or otherwise acquired or retired in order to satisfy applicable statutory or regulatory obligations.

"Dollars" and "$": dollars in lawful currency of the United States of America.

"Domestic Subsidiary": any Subsidiary of the Borrower which is not a Foreign Subsidiary.

"ECF Payment Date": as defined in Subsection 4.4(c).

"Encana": Encana Oil & Gas (USA) Inc. and its permitted successors and assigns.

"Encana Intercreditor Agreement": an intercreditor agreement, dated as of the Closing Date, executed and delivered by Borrower, each of its Subsidiaries, Encana and the Collateral Agent, substantially in the form of Exhibit M hereto, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Environmental Costs": any and all costs or expenses (including attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, fines, penalties, damages, settlement payments, judgments and awards), of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way relating to, any actual or alleged violation of, noncompliance with or liability under any Environmental

Laws. Environmental Costs include any and all of the foregoing, without regard to whether they arise out of or are related to any past, pending or threatened proceeding of any kind.

"Environmental Laws": any and all U.S. or foreign, federal, state, provincial, territorial, local or municipal laws, rules, orders, enforceable guidelines and orders-in-council, regulations, statutes, ordinances, codes, decrees, and such requirements of any Governmental Authority properly promulgated and having the force and effect of law or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health (as it relates to exposure to Materials of Environmental Concern) or the environment, as have been, or now or at any relevant time hereafter are, in effect.

"Environmental Permits": any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurodollar Loans": Loans the rate of interest applicable to which is based upon the Adjusted LIBOR Rate.

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

"Event of Default": any of the events specified in Subsection 9.1, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Excess Cash Flow": for any period, an amount equal to:

(a) the sum, without duplication, of

(i) Consolidated Net Income for such period,

(ii) an amount equal to the amount of all non-cash charges to the extent deducted in arriving at such Consolidated Net Income and cash receipts to the extent excluded in arriving at such Consolidated Net Income,

(iii) decreases in Consolidated Working Capital for such period (other than any such decreases arising from acquisitions by the Borrower and the

Restricted Subsidiaries completed during such period or the application of purchase accounting),

(iv) an amount equal to the aggregate net non-cash loss on Asset Dispositions by the Borrower and the Restricted Subsidiaries during such period (other than Asset Dispositions in the ordinary course of business) to the extent deducted in arriving at such Consolidated Net Income,

(v) cash receipts in respect of Hedge Agreements during such period to the extent not otherwise included in Consolidated Net Income, and

(vi) any extraordinary, unusual or nonrecurring cash gain,

less (b) the sum, without duplication, of

(i) an amount equal to the amount of all non-cash credits included in arriving at such Consolidated Net Income and cash charges to the extent not deducted in arriving at such Consolidated Net Income,

(ii) without duplication of amounts deducted pursuant to clause (xi) below in prior years, the amount of Capital Expenditures either made in cash or accrued during such period (provided that, whether any such Capital Expenditures shall be deducted for the period in which cash payments for such Capital Expenditures have been paid or the period in which such Capital Expenditures have been accrued shall be at the Borrower's election; provided, further that, in no case shall any accrual of a Capital Expenditure which has previously been deducted give rise to a subsequent deduction upon the making of such Capital Expenditure in cash in the same or any subsequent period), except to the extent that such Capital Expenditures were financed with the proceeds of (w) Indebtedness of the Borrower or the Restricted Subsidiaries (unless such Indebtedness has been repaid) or (x) equity contributions to, or the sale of Capital Stock of, the Borrower or any of its Subsidiaries,

(iii) the aggregate amount of all principal payments, purchases or other retirements of Indebtedness of the Borrower and the Restricted Subsidiaries (including (A) the principal component of payments in respect of Capitalized Lease Obligations and (B) the amount of a mandatory prepayment of Term Loans pursuant to Subsection 4.4(c)(i) or Subsection 4.4(c)(iv) to the extent required due to an Asset Disposition or an Extraordinary Receipt that resulted in an increase to Consolidated Net Income and not in excess of the amount of such increase, but excluding (x) all other prepayments of Term Loans, (y) all prepayments of loans under the ABL Facility and (z) all prepayments of any other revolving loans, to the extent there is not an equivalent permanent reduction in commitments thereunder) made during such period, except to the extent financed with the proceeds of Indebtedness of the Borrower or the Restricted Subsidiaries,

(iv) an amount equal to the aggregate net non-cash gain on Asset Dispositions by the Borrower and the Restricted Subsidiaries during such period

(other than Asset Dispositions in the ordinary course of business) to the extent included in arriving at such Consolidated Net Income,

(v) increases in Consolidated Working Capital for such period (other than any such increases arising from acquisitions by the Borrower and the Restricted Subsidiaries completed during such period or the application of purchase accounting),

(vi) payments by the Borrower and the Restricted Subsidiaries during such period in respect of long-term liabilities of the Borrower and the Restricted Subsidiaries other than Indebtedness, to the extent not already deducted from Consolidated Net Income,

(vii) without duplication of amounts deducted pursuant to clause (xi) below in prior fiscal years, the aggregate amount of cash consideration paid by the Borrower and the Restricted Subsidiaries (on a consolidated basis) in connection with Investments (including acquisitions) made during such period constituting "Permitted Investments" (other than Permitted Investments of the type described in clause (iii) of the definition thereof and intercompany Investments by and among the Borrower and its Restricted Subsidiaries) or made pursuant to Subsection 8.2 to the extent that such Investments were financed with internally generated cash flow of the Borrower and the Restricted Subsidiaries,

(viii) the amount of Restricted Payments (other than Investments) made in cash during such period (on a consolidated basis) by the Borrower and the Restricted Subsidiaries pursuant to Subsection 8.2(b) (other than Subsections 8.2(b)(vi), (xii) and (xiv)), to the extent such Restricted Payments were financed with internally generated cash flow of the Borrower and the Restricted Subsidiaries,

(ix) the aggregate amount of expenditures actually made by the Borrower and the Restricted Subsidiaries in cash during such period (including expenditures for the payment of financing fees) to the extent that such expenditures are not expensed during such period, are not paid out of a reserve established in (and deducted in computing Consolidated Net Income for) a prior period and are not deducted in calculating Consolidated Net Income,

(x) the aggregate amount of any premium, make-whole or penalty payments actually paid in cash by the Borrower and the Restricted Subsidiaries during such period that are made in connection with any prepayment of Indebtedness to the extent that such payments are not deducted in calculating Consolidated Net Income,

(xi) at the Borrower's election, without duplication of amounts deducted from Excess Cash Flow in prior periods, the aggregate consideration required to be paid in cash by the Borrower or any of the Restricted Subsidiaries pursuant to binding contracts (the "Contract Consideration") entered into prior to

or during such period relating to Investments constituting "Permitted Investments" (other than Permitted Investments of the type described in clause (iii) of the definition thereof and intercompany Investments by and among the Borrower and its Restricted Subsidiaries) or made pursuant to Subsection 8.2 or Capital Expenditures to be consummated or made during the period of four consecutive fiscal quarters of the Borrower following the end of such period, provided that to the extent the aggregate amount of internally generated cash actually utilized to finance such Permitted Investments and Capital Expenditures during such period of four consecutive fiscal quarters is less than the Contract Consideration, the amount of such shortfall shall be added to the calculation of Excess Cash Flow at the end of such period of four consecutive fiscal quarters,

(xii) the amount of Permitted Tax Distributions paid in cash plus the amount of taxes (including penalties and interest) paid in cash or tax reserves set aside or payable (without duplication) in such period to the extent they exceed the amount of tax expense deducted in determining Consolidated Net Income for such period,

(xiii) cash expenditures in respect of Hedge Agreements during such period to the extent not deducted in arriving at such Consolidated Net Income; and

(xiv) any extraordinary, unusual or nonrecurring cash loss or charge (including fees, expenses and charges associated with any acquisition, merger or consolidation after the Closing Date).

"Exchange Act": the Securities Exchange Act of 1934, as amended from time to time.

"Excluded Assets": as defined in the Guarantee and Collateral Agreement.

"Excluded Contribution": Net Cash Proceeds, or the Fair Market Value of property or assets, received by the Borrower as capital contributions to the Borrower after the Closing Date or from the issuance or sale (other than to a Restricted Subsidiary) of Capital Stock (other than Disqualified Stock) of the Borrower, in each case to the extent designated as an Excluded Contribution pursuant to a certificate of a Responsible Officer of the Borrower.

"Excluded Subsidiary": at any date of determination, any Subsidiary of the Borrower designated as such in writing by the Borrower to the Administrative Agent:

(a) that is an Immaterial Subsidiary;

(b) that is prohibited by Requirement of Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing or granting Liens to secure the Term Loan Facility Obligations or if Guaranteeing or granting Liens to secure the Term Loan Facility Obligations would

require governmental (including regulatory) consent, approval, license or authorization unless such consent, approval, license or authorization has been received;

(c) [Reserved];

(d) with respect to which the provision of such guarantee of the Term Loan Facility Obligations would result in material adverse tax consequences to the Borrower or one of its Subsidiaries or any Parent Entity or any of its successors or assigns (as reasonably determined by the Borrower and notified in writing to the Administrative Agent);

(e) that is a Subsidiary of a Foreign Subsidiary;

(f) that is a joint venture or Non-Wholly Owned Subsidiary, but only to the extent that the Organizational Documents or other agreements with equity or debt holders of such joint venture or Non-Wholly Owned Subsidiary (x) do not permit such entity to guarantee or grant Liens to secure the Term Loan Facility Obligations, or (y) permit such entity to guarantee or grant Liens to secure the Term Loan Facility Obligations subject to obtaining certain consents and the Borrower has used its commercially reasonable efforts to obtain such consents and such consents have not been obtained;

(g) that is an Unrestricted Subsidiary;

(h) that is a Captive Insurance Subsidiary;

(i) [Reserved]; or

(j) that is a Subsidiary formed solely for the purpose of becoming a Parent Entity, or merging with the Borrower in connection with another Subsidiary becoming a Parent Entity, or otherwise creating or forming a Parent Entity;

provided that, notwithstanding the foregoing, any Domestic Subsidiary that Guarantees the payment of the ABL Indebtedness or is a Borrower under the ABL Credit Agreement shall not be an Excluded Subsidiary. Subject to the proviso in the preceding sentence, any Subsidiary so designated as an Excluded Subsidiary that fails to meet the foregoing requirements as of the last day of the Most Recent Four Quarter Period shall continue to be deemed an Excluded Subsidiary hereunder until the date that is sixty (60) days following the date on which such annual or quarterly financial statements were required to be delivered pursuant to Subsection 7.1 with respect to such Most Recent Four Quarter Period.

"Excluded Taxes": (a) any Taxes measured by or imposed upon the net income of any Agent or Lender or its applicable lending office, or any branch or affiliate thereof, and all franchise Taxes, branch Taxes, Taxes on doing business or Taxes measured by or imposed upon the overall capital or net worth of any such Agent or Lender or its applicable lending office, or any branch or affiliate thereof, in each case imposed: (i) by the jurisdiction under the laws of which such Agent or Lender, applicable lending office, branch or affiliate is organized or is located, or in which its principal executive office is located, or any nation within which such jurisdiction is located or any political subdivision thereof; or (ii) by reason of any connection

between the jurisdiction imposing such Tax and such Agent or Lender, applicable lending office, branch or affiliate other than a connection arising solely from such Agent or Lender having executed, delivered or performed its obligations under, or received payment under or enforced, this Agreement or any Notes, and (b) any Tax imposed by FATCA.

"Existing Capitalized Lease Obligations": Capitalized Lease Obligations of the Borrower and its Restricted Subsidiaries existing on the Closing Date and disclosed on Schedule 1.1(a).

"Existing Indebtedness": Indebtedness for borrowed money of the Borrower and its Restricted Subsidiaries outstanding on the Closing Date and disclosed on Schedule 1.1(b).

"Existing Term Loans": as defined in Subsection 2.8(a).

"Existing Term Tranche": as defined in Subsection 2.8(a).

"Extended Loans": as defined in Subsection 2.8(a).

"Extended Term Loans": as defined in Subsection 2.8(a).

"Extended Term Tranche": as defined in Subsection 2.8(a).

"Extending Lender": as defined in Subsection 2.8(b).

"Extension": as defined in Subsection 2.8(b).

"Extension Amendment": as defined in Subsection 2.8(c).

"Extension Date": as defined in Subsection 2.8(d).

"Extension Election": as defined in Subsection 2.8(b).

"Extension of Credit": as to any Lender, the making of a Loan.

"Extension Request": as defined in Subsection 2.8(a).

"Extension Series": all Extended Loans that are established pursuant to the same Extension Amendment (or any subsequent Extension Amendment to the extent such Extension Amendment expressly provides that the Extended Loans provided for therein are intended to be part of any previously established Extension Series) and that provide for the same interest margins and amortization schedule.

"Extraordinary Receipts": any payments received by a Loan Party or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds of Asset Dispositions or Recovering Events) consisting of (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (b) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries, or (ii) received by a Loan Party or any of its Subsidiaries as reimbursement for any payment

previously made to such Person), and (c) any purchase price adjustment (other than a working capital adjustment) received in connection with any purchase agreement.

"Facility": each of (a) the Initial Term Loan Commitments and the Extensions of Credit made thereunder and (b) any other committed facility hereunder and the Extensions of Credit made thereunder.

"Fair Market Value": with respect to any asset or property, the fair market value of such asset or property as determined in good faith by the Board of Directors, whose determination will be conclusive.

"FATCA": Sections 1471 through 1474 of the Code as in effect on the Closing Date (and any amended or successor provisions that are substantially comparable), and any regulations or other administrative authority promulgated thereunder or any agreement (including any intergovernmental agreement) entered into thereunder or in furtherance thereof.

"Federal District Court": as defined in Subsection 11.13(a).

"Federal Funds Effective Rate": for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"FIRREA": the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

"First Lien Obligations": (i) the Term Loan Facility Obligations and (ii) the Additional Obligations and Refinancing Indebtedness in respect of the Indebtedness described in this clause (ii) (other than any such Additional Obligations and Refinancing Indebtedness that are unsecured or secured by a Lien ranking junior to the Lien securing the Term Loan Facility Obligations) secured by a first priority interest in the Term Priority Collateral and a second priority interest in the ABL Priority Collateral, collectively.

"first priority": with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that such Lien is the most senior Lien to which such Collateral is subject (subject to Permitted Liens applicable to such Collateral which have priority over the respective Liens on such Collateral created pursuant to the relevant Security Document (or, in the case of Collateral constituting Pledged Stock (as defined in the Guarantee and Collateral Agreement), Permitted Liens of the type described in clauses (a), (l), (m), (n), (p) and, solely with respect to Permitted Liens described in the foregoing clauses, (o) of the definition thereof)). For purposes of this definition, a Lien purported to be created in any Collateral

pursuant to any Security Document will be construed as the "most senior Lien" to which such Collateral is subject, notwithstanding the existence of a Permitted Lien on the Collateral that is pari passu with or senior to the Lien on such Collateral, so long as such Permitted Lien is subject to the terms of the ABL/Term Loan Intercreditor Agreement or an Other Intercreditor Agreement.

"Fiscal Year": any period of twelve (12) consecutive months ending on December 31st of any calendar year.

"Fixed GAAP Date": the Closing Date, provided that at any time after the Closing Date, the Borrower may by written notice to the Administrative Agent elect to change the Fixed GAAP Date to be the date specified in such notice, and upon such notice, the Fixed GAAP Date shall be such date for all periods beginning on and after the date specified in such notice.

"Fixed GAAP Terms": (a) the definitions of the terms "Borrowing Base", "Capital Expenditures", "Capitalized Lease Obligation", "Consolidated Coverage Ratio", "Consolidated EBITDA", "Consolidated Secured Leverage Ratio", "Consolidated Interest Expense", "Consolidated Net Income", "Consolidated Total Leverage Ratio", "Consolidated Secured Indebtedness", "Consolidated Total Assets", "Consolidated Total Indebtedness", "Consolidated Working Capital", "Consolidation", "Excess Cash Flow", "Inventory" or "Receivables", (b) all defined terms in this Agreement to the extent used in or relating to any of the foregoing definitions, and all ratios and computations based on any of the foregoing definitions, and (c) any other term or provision of this Agreement or the Loan Documents that, at the Borrower's election, may be specified by the Borrower by written notice to the Administrative Agent from time to time.

"Foreign Pension Plan": a registered pension plan which is subject to applicable pension legislation other than ERISA or the Code, which a Restricted Subsidiary sponsors or maintains, or to which it makes or is obligated to make contributions.

"Foreign Plan": each Foreign Pension Plan, deferred compensation or other retirement or superannuation plan, fund, program, agreement, commitment or arrangement whether oral or written, funded or unfunded, sponsored, established, maintained or contributed to, or required to be contributed to, or with respect to which any liability is borne, outside the United States of America, by the Borrower or any of its Restricted Subsidiaries, other than any such plan, fund, program, agreement or arrangement sponsored by a Governmental Authority.

"Foreign Subsidiary": any Subsidiary of the Borrower which is organized and existing under the laws of any jurisdiction outside of the United States of America or that is a Foreign Subsidiary Holdco. Any subsidiary of the Borrower which is organized and existing under the laws of Puerto Rico or any other territory of the United States of America shall be a Foreign Subsidiary.

"Foreign Subsidiary Holdco": any Restricted Subsidiary of the Borrower, so long as such Restricted Subsidiary has no material assets other than securities or Indebtedness of one or more Foreign Subsidiaries (or Subsidiaries thereof), and intellectual property relating to such

Foreign Subsidiaries (or Subsidiaries thereof) and other assets (including cash, Cash Equivalents or Temporary Cash Investments) relating to an ownership interest in any such securities, Indebtedness, intellectual property or Subsidiaries; provided, that no Subsidiary of the Borrower shall be a "Foreign Subsidiary Holdco" if such Subsidiary is not a "Foreign Subsidiary Holdco" (or comparable term) for purposes of the ABL Facility.

"Funded Debt": all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of the Borrower or any Restricted Subsidiary, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including all amounts of such debt required to be paid or prepaid within one year from the date of its creation, and, in the case of the Borrower, Indebtedness in respect of the Term Loans, the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements.

"GAAP": generally accepted accounting principles in the United States of America as in effect on the Fixed GAAP Date (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Agreement), including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession, and subject to the following sentence. If at any time the SEC permits or requires U.S. domiciled companies subject to the reporting requirements of the Exchange Act to use IFRS in lieu of GAAP for financial reporting purposes, the Borrower may elect by written notice to the Administrative Agent to so use IFRS in lieu of GAAP and, upon any such notice, references herein to GAAP shall thereafter be construed to mean (a) for periods beginning on and after the date specified in such notice, IFRS as in effect on the date specified in such notice (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Agreement) and (b) for prior periods, GAAP as defined in the first sentence of this definition. All ratios and computations based on GAAP contained in this Agreement shall be computed in conformity with GAAP.

"Governmental Authority": the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

"Guarantee": any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person; provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantee and Collateral Agreement": the Guarantee and Collateral Agreement delivered to the Collateral Agent as of the date hereof, substantially in the form of Exhibit B

hereto, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any such obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guarantor Subordinated Obligations": with respect to a Subsidiary Guarantor, any Indebtedness of such Subsidiary Guarantor (whether outstanding on the Closing Date or thereafter Incurred) that is expressly subordinated in right of payment to the obligations of such Subsidiary Guarantor under its Subsidiary Guaranty pursuant to a written agreement.

"Guarantors": the collective reference to New Holdings and each Subsidiary Guarantor; individually, a "Guarantor".

"Hedge Agreements": collectively, Interest Rate Agreements, Currency Agreements and Commodities Agreements.

"Hedge Bank": any Person that, at the time it enters into an Interest Rate Agreement, Currency Agreement or a Commodities Agreement permitted under Sections 7 and 8, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Interest Rate Agreement, Currency Agreement or Commodities Agreement.

"Hedging Obligations": as to any Person, the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodities Agreement.

"IFRS": International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such board, or the SEC, as the case may be), as in effect from time to time.

"Immaterial Subsidiary": any Subsidiary of the Borrower designated as such in writing by the Borrower to the Administrative Agent that (i) (x) contributed 2.50% or less of Consolidated EBITDA for the Most Recent Four Quarter Period, and (y) had consolidated assets representing 2.50% or less of Consolidated Total Assets as of the end of the most recently ended financial period for which consolidated financial statements of the Borrower are available; and (ii) together with all other Immaterial Subsidiaries designated pursuant to the preceding clause (i), (x) contributed 5.00% or less of Consolidated EBITDA for the Most Recent Four Quarter Period, and (y) had consolidated assets representing 5.00% or less of Consolidated Total Assets as of the end of the Most Recent Four Quarter Period. Any Subsidiary so designated as an Immaterial Subsidiary that fails to meet the foregoing requirements as of the last day of the Most Recent Four Quarter Period shall continue to be deemed an "Immaterial Subsidiary" hereunder until the date that is sixty (60) days following the date on which such annual or quarterly financial statements were required to be delivered pursuant to Subsection 7.1 with respect to such Most Recent Four Quarter Period.

"Increase Supplement": as defined in Subsection 2.6(c).

"Incremental Commitment Amendment": as defined in Subsection 2.6(d).

"Incremental Commitments": as defined in Subsection 2.6(a).

"Incremental Indebtedness": Indebtedness Incurred by the Borrower pursuant to and in accordance with Subsection 2.6.

"Incremental Loans": as defined in Subsection 2.6(d).

"Incremental Term Loan": any Incremental Loan made pursuant to an Incremental Term Loan Commitment.

"Incremental Term Loan Commitments": as defined in Subsection 2.6(a).

"Incur": issue, assume, enter into any Guarantee of, incur or otherwise become liable for; and the terms "Incurs," "Incurred" and "Incurrence" shall have a correlative meaning; provided that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. Accrual of interest, the accretion of accreted value, the payment of interest in the form of additional Indebtedness, and the payment of dividends on Capital Stock constituting Indebtedness in the form of additional shares of the same class of Capital Stock, will not be deemed to be an Incurrence of Indebtedness. Any Indebtedness issued at a discount (including Indebtedness on which interest is payable through the issuance of additional Indebtedness) shall be deemed

Incurred at the time of original issuance of the Indebtedness at the initial accreted amount thereof.

"Indebtedness": with respect to any Person on any date of determination (without duplication):

(i) the principal of indebtedness of such Person for borrowed money;

(ii) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(iii) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit, bankers' acceptances or other instruments plus the aggregate amount of drawings thereunder that have not then been reimbursed);

(iv) all obligations of such Person to pay the deferred and unpaid purchase price of property (except Trade Payables), which purchase price is due more than one year after the date of placing such property in final service or taking final delivery and title thereto;

(v) all Capitalized Lease Obligations of such Person;

(vi) the redemption, repayment or other repurchase amount of such Person with respect to any Disqualified Stock of such Person or (if such Person is a Subsidiary of the Borrower other than a Subsidiary Guarantor) any Preferred Stock of such Subsidiary, but excluding, in each case, any accrued dividends (the amount of such obligation to be equal at any time to the maximum fixed involuntary redemption, repayment or repurchase price for such Capital Stock, or if less (or if such Capital Stock has no such fixed price), to the involuntary redemption, repayment or repurchase price therefor calculated in accordance with the terms thereof as if then redeemed, repaid or repurchased, and if such price is based upon or measured by the fair market value of such Capital Stock, such fair market value shall be as determined in good faith by the Board of Directors or the board of directors or other governing body of the issuer of such Capital Stock);

(vii) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided that the amount of Indebtedness of such Person shall be the lesser of (A) the fair market value of such asset at such date of determination (as determined in good faith by the Borrower) and (B) the amount of such Indebtedness of such other Persons;

(viii) all Guarantees by such Person of Indebtedness of other Persons, to the extent so Guaranteed by such Person;

(ix) to the extent not otherwise included in this definition, net Hedging Obligations of such Person (the amount of any such obligation to be equal at any time to

the termination value of such agreement or arrangement giving rise to such Hedging Obligation that would be payable by such Person at such time); and

(x) obligations evidenced by the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements.

The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in this Agreement, or otherwise shall equal the amount thereof that would appear as a liability on a balance sheet of such Person (excluding any notes thereto) prepared in accordance with GAAP.

"Indemnified Liabilities": as defined in Subsection 11.5.

"Indemnitee": as defined in Subsection 11.5.

"Individual Lender Exposure": of any Lender, at any time, the sum of the aggregate principal amount of all Term Loans made by such Lender and then outstanding.

"Initial Agreement": as defined in Subsection 8.3(c).

"Initial Term Loan": as defined in Subsection 2.1.

"Initial Term Loan Commitment": as to any Lender, its obligation to make Initial Term Loans to the Borrower pursuant to Subsection 2.1 in an aggregate amount not to exceed at any one time outstanding the amount set forth opposite such Lender's name in Schedule A under the heading "Initial Term Loan Commitment"; collectively, as to all the Lenders, the "Initial Term Loan Commitments". The original aggregate amount of the Initial Term Loan Commitments on the Closing Date is $60,000,000.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"Intellectual Property": as defined in Subsection 5.9.

"Intercompany Subordination Agreement": an intercompany subordination agreement, dated as of the Closing Date, executed and delivered by Borrower, each of its Subsidiaries and the Administrative Agent, the form and substance of which is reasonably satisfactory to Administrative Agent.

"Intercreditor Agreement Supplement": as defined in Subsection 10.8(a).

"Interest Payment Date": (a) as to any ABR Loan, the last Business Day of each March, June, September and December to occur while such Loan is outstanding, and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, and (c) as to any Eurodollar Loan having an Interest Period longer than three months, (i) each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and (ii) the last day of such Interest Period.

"Interest Period": with respect to any Eurodollar Loan:

(a) initially, the period commencing on the Borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months (or, if agreed to by each affected Lender, twelve (12) months or a shorter period) thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months (or if agreed to by each affected Lender, twelve (12) months or a shorter period) thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Maturity Date shall (for all purposes other than Subsection 4.12) end on the Maturity Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a scheduled payment of any Eurodollar Loan during an Interest Period for such Eurodollar Loan.

"Interest Rate Agreement": with respect to any Person, any interest rate protection agreement, future agreement, option agreement, swap agreement, cap agreement, collar agreement, hedge agreement or other similar agreement or arrangement (including derivative agreements or arrangements), as to which such Person is party or a beneficiary.

"Inventory": goods held for sale, lease or use by a Person in the ordinary course of business, net of any reserve for goods that have been segregated by such Person to be returned to the applicable vendor for credit, as determined in accordance with GAAP.

"Investment": in any Person by any other Person, any direct or indirect advance, loan or other extension of credit (other than to customers, dealers, licensees, franchisees, suppliers, consultants, directors, officers or employees of any Person in the ordinary course of business) or capital contribution (by means of any transfer of cash or other property to others or

any payment for property or services for the account or use of others) to, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person. For purposes of the definition of "Unrestricted Subsidiary" and Subsection 8.2 only, (i) "Investment" shall include the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the Fair Market Value of the net assets of any Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary, provided that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (x) the Borrower's "Investment" in such Subsidiary at the time of such redesignation less (y) the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation, and (ii) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value (as determined in good faith by the Borrower) at the time of such transfer. Guarantees shall not be deemed to be Investments. The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Borrower's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

"Investment Company Act": the Investment Company Act of 1940, as amended from time to time.

"Investment Grade Rating": a rating of Baa3 or better by Moody's and BBB- or better by S&P (or, in either case, the equivalent of such rating by such organization), or an equivalent rating by any other Rating Agency.

"Investment Grade Securities": (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents); (ii) debt securities or debt instruments with an Investment Grade Rating issued or directly and fully guaranteed or insured by any Governmental Authority; (iii) debt securities or debt instruments with a rating of A3 or better by Moody's and A- or better by S&P (or, in either case, the equivalent of such rating by such organization), or an equivalent rating by any other Rating Agency, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Subsidiaries; (iv) investments in any fund that invests exclusively in securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof, and/or debt securities or debt instruments with an Investment Grade Rating, which fund may also hold immaterial amounts of cash pending investment or distribution; and (v) corresponding instruments in countries other than the United States customarily utilized for high quality investments but in an aggregate amount not exceeding 10% of the Fair Market Value of all Investment Grade Securities held by the Borrower and its Restricted Subsidiaries.

"Junior Debt": any Subordinated Obligations and Guarantor Subordinated Obligations[, in each case, other than the Subordinated Notes].

"Junior Lien Intercreditor Agreement: each intercreditor agreement entered into in connection with permitted Junior Debt, in a form and substance reasonably satisfactory to the

Borrower and the Agents, as required by the terms hereof, as amended, restated, supplemented, waived or otherwise modified from time to time.

"Lender Joinder Agreement": as defined in Subsection 2.6(c).

"Lenders": each of the Persons identified as a "Lender" on the signature pages hereto and their successors and permitted assigns.

"Lending Office": with respect to any Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender's administrative questionnaire or in any applicable Assignment and Acceptance pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"LIBOR Rate":

(i) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to (A) the ICE Benchmark Administration Limited LIBOR Rate ("ICE LIBOR"), as published by Bloomberg (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such Interest Period) with a term equivalent to such Interest Period or, (B) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(ii) for any interest rate calculation with respect to an ABR Loan, the rate per annum equal to (A) ICE LIBOR, at approximately 11:00 a.m., London time, determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (B) if such published rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the ABR Loan being made or maintained and with a term equal to one (1) month would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank Eurodollar market at their request at the date and time of determination.

"Lien": any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"Limited Liability Company Agreement": the Fourth Amended and Restated Limited Liability Company Agreement of Boomerang Tube, LLC dated on or about the date hereof, as in effect on the Closing Date.

"Loan": each Initial Term Loan, Incremental Loan and Extended Loan; collectively, the "Loans".

"Loan Documents": this Agreement, any Notes, the Control Agreements, the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, the Encana Intercreditor Agreement, each Junior Lien Intercreditor Agreement (on and after the execution thereof), each Other Intercreditor Agreement (on and after the execution thereof), the Intercompany Subordination Agreement, the Guarantee and Collateral Agreement, and any other Security Documents, each as amended, restated, supplemented, waived or otherwise modified from time to time.

"Loan Parties": the Borrower and the Guarantors; individually, a "Loan Party".

"London Banking Day": any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Management Advances": (1) loans or advances made to directors, officers, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary (x) in respect of travel, entertainment or moving related expenses incurred in the ordinary course of business, (y) in respect of moving related expenses incurred in connection with any closing or consolidation of any facility, or (z) in the ordinary course of business and (in the case of this clause (z)) not exceeding $1,000,000 in the aggregate outstanding at any time, (2) promissory notes of Management Investors acquired in connection with the issuance of Management Stock to such Management Investors, (3) Management Guarantees, or (4) other Guarantees of borrowings by Management Investors in connection with the purchase of Management Stock, which Guarantees are permitted under Subsection 8.1.

"Management Guarantees": guarantees (x) of up to an aggregate principal amount outstanding at any time of $1,000,000 of borrowings by Management Investors in connection with their purchase of Management Stock or (y) made on behalf of, or in respect of loans or advances made to, directors, officers, employees or consultants of any Parent Entity, New Holdings, the Borrower or any Restricted Subsidiary (1) in respect of travel, entertainment and moving related expenses incurred in the ordinary course of business, or (2) in the ordinary course of business and (in the case of this clause (2)) not exceeding $1,000,000 in the aggregate outstanding at any time.

"Management Investors": the officers, directors, employees and other members of the management of any Parent Entity, the Borrower or any of their respective Subsidiaries, or family members or relatives of any of the foregoing (provided that, solely for purposes of the definition of "Permitted Holders," such relatives shall include only those Persons who are or become Management Investors in connection with estate planning for or inheritance from other Management Investors, as determined in good faith by the Borrower, which determination shall be conclusive), or trusts, partnerships or limited liability companies for the benefit of any of the

foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of New Holdings, the Borrower, any Restricted Subsidiary or any Parent Entity.

"Management Stock": Capital Stock of New Holdings or any Parent Entity (including any options, warrants or other rights in respect thereof) held by any of the Management Investors.

"Margin Stock": "margin stock" as such term is defined in Regulation U.

"Material Adverse Effect": a material adverse effect on (a) the business, operations, property or condition (financial or otherwise) of the Borrower and its Restricted Subsidiaries taken as a whole or (b) the validity or enforceability as to any Loan Party thereto of this Agreement or any of the other Loan Documents or the rights or remedies of the Agents and the Lenders under the Loan Documents or with respect to the Collateral taken as a whole.

"Material Subsidiaries": Restricted Subsidiaries of the Borrower constituting, individually or in the aggregate (as if such Restricted Subsidiaries constituted a single Subsidiary), a "significant subsidiary" in accordance with Rule 1-02 under Regulation S-X.

"Materials of Environmental Concern": any hazardous or toxic substances or materials or wastes defined, listed, or regulated as such in or under, or which may give rise to liability under, any applicable Environmental Law, including gasoline, petroleum (including crude oil or any fraction thereof), petroleum products or by-products, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date": [_____, 2020][2].

"Maximum Incremental Facilities Amount": $20,000,000.

"Maximum Rate": as defined in Subsection 4.1(e).

"Moody's": Moody's Investors Service, Inc., and its successors.

"Mortgage Policies": as defined in Subsection 6.1(k)(i).

"Mortgaged Fee Properties": the collective reference to each real property owned in fee by the Loan Parties listed on Schedule 5.8 or required to be mortgaged as Collateral pursuant to the requirements of Subsection 7.9, including the land and all buildings, improvements, structures and fixtures now or subsequently located thereon and owned by any such Loan Party.

"Mortgages": each of the mortgages and deeds of trust, or similar security instruments executed and delivered by any Loan Party to the Collateral Agent, substantially in

[2] NTD: To be the date that is 57 months following the Closing Date.

the form of Exhibit C, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Most Recent Four Quarter Period": the four (4) fiscal quarter period of the Borrower ending on the last day of the most recently completed fiscal year or fiscal quarter for which financial statements of the Borrower have been (or have been required to be) delivered under Subsection 7.1(a) or 7.1(b).

"Multiemployer Plan": a Plan which is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Available Cash": from an Asset Disposition or Recovery Event, an amount equal to the cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or Recovery Event or received in any other non-cash form) therefrom, in each case net of (i) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all Permitted Tax Distributions made or to be made and (without duplication) all Federal, state, provincial, foreign and local taxes required to be paid or to be accrued as a liability under GAAP, as a consequence of such Asset Disposition or Recovery Event (including as a consequence of any transfer of funds in connection with the application thereof in accordance with Subsection 8.4), (ii) all payments made, and all installment payments required to be made, on any Indebtedness (other than Additional Obligations, Term Loans and Refinancing Indebtedness in respect of each of the foregoing) (x) that is secured by any assets subject to such Asset Disposition or involved in such Recovery Event, in accordance with the terms of any Lien upon such assets, or (y) that must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be repaid out of the proceeds from such Asset Disposition or Recovery Event, including but not limited to any payments required to be made to increase borrowing availability under any revolving credit facility, (iii) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Disposition or Recovery Event, or to any other Person (other than the Borrower or a Restricted Subsidiary) owning a beneficial interest in the assets disposed of in such Asset Disposition or subject to such Recovery Event, (iv) any liabilities or obligations associated with the assets disposed of in such Asset Disposition or involved in such Recovery Event and retained, indemnified or insured by the Borrower or any Restricted Subsidiary after such Asset Disposition or Recovery Event, including without limitation pension and other post-employment benefit liabilities, liabilities related to environmental matters, and liabilities relating to any indemnification obligations associated with such Asset Disposition or Recovery Event, (v) in the case of an Asset Disposition, the amount of any purchase price or similar adjustment (x) claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim shall have been settled or otherwise finally resolved, or (y) paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Disposition and (vi) in the case of any Recovery Event, any amount thereof that constitutes or represents reimbursement or compensation for any amount previously paid or to be paid by the Borrower or any of its Subsidiaries.

"Net Cash Proceeds": with respect to any issuance or sale of any securities of the Borrower or any Subsidiary by the Borrower or any Subsidiary, or any capital contribution, or any Incurrence of Indebtedness, the cash proceeds of such issuance, sale, contribution or Incurrence net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance, sale, contribution or Incurrence and net of taxes paid or payable as a result thereof.

"New Holdings": Boomerang Tube Holdings, Inc., a Delaware corporation.

"New York Courts": as defined in Subsection 11.13(a).

"New York Supreme Court": as defined in Subsection 11.13(a).

"Non-Call Period: as defined in Subsection 4.4(a).

"Non-Defaulting Lender": at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Excluded Taxes": all Taxes other than Excluded Taxes.

"Non-Extending Lender": as defined in Subsection 2.8(e).

"Non-Wholly Owned Subsidiary": each Subsidiary that is not a Wholly Owned Subsidiary.

"Notes": as defined in Subsection 2.2(a).

"Obligations": with respect to any Indebtedness, any principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for reorganization relating to the Borrower or any Restricted Subsidiary whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, Guarantees of such Indebtedness (or of Obligations in respect thereof), other monetary obligations of any nature and all other amounts payable thereunder or in respect thereof.

"Obligor": any purchaser of goods or services or other Person obligated to make payment to the Borrower or any of its Restricted Subsidiaries (other than any Restricted Subsidiary that is not a Loan Party) in respect of a purchase of such goods or services.

"OID": as defined in Subsection 2.6(d).

"Organizational Documents": with respect to any Person, (a) the articles of incorporation, certificate of incorporation or certificate of formation (or the equivalent organizational documents) of such Person and (b) the bylaws or operating agreement (or the equivalent governing documents) of such Person.

"Other Intercreditor Agreement": each intercreditor agreement entered into in connection with permitted secured Additional Indebtedness or Incremental Indebtedness, in a form and substance reasonably agreed by the Borrower and the Agents, as required by the terms hereof, as amended, supplemented, waived or otherwise modified from time to time.

"Outstanding Amount": with respect to the Loans on any date, the principal amount thereof after giving effect to any borrowings and prepayments or repayments thereof occurring on such date.

"Parent Entity": New Holdings and any Other Parent, and any other Person that is a Subsidiary of New Holdings or any Other Parent and of which the Borrower is a Subsidiary. As used herein, "Other Parent" means a Person of which the Borrower becomes a Subsidiary after the Closing Date, provided that either (x) immediately after the Borrower first becomes a Subsidiary of such Person, more than 50.0% of the Voting Stock of such Person shall be held by one or more Persons that held more than 50.0% of the Voting Stock of the Borrower or a Parent Entity of the Borrower immediately prior to the Borrower first becoming such Subsidiary or (y) such Person shall be deemed not to be an Other Parent for the purpose of determining whether a Change of Control shall have occurred by reason of the Borrower first becoming a Subsidiary of such Person.

"Parent Expenses": (i) costs (including all professional fees and expenses) incurred by any Parent Entity in connection with maintaining its existence or in connection with its reporting obligations under, or in connection with compliance with, applicable laws or applicable rules of any governmental, regulatory or self-regulatory body or stock exchange, this Agreement or any other agreement or instrument relating to Indebtedness of the Borrower or any Restricted Subsidiary, including in respect of any reports filed with respect to the Securities Act, the Exchange Act or the respective rules and regulations promulgated thereunder, (ii) expenses incurred by any Parent Entity in connection with the acquisition, development, maintenance, ownership, prosecution, protection and defense of its intellectual property and associated rights (including but not limited to trademarks, service marks, trade names, trade dress, patents, copyrights and similar rights, including registrations and registration or renewal applications in respect thereof; inventions, processes, designs, formulae, trade secrets, know-how, confidential information, computer software, data and documentation, and any other intellectual property rights; and licenses of any of the foregoing) to the extent such intellectual property and associated rights relate to the business or businesses of the Borrower or any Subsidiary thereof, (iii) indemnification obligations of any Parent Entity owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements with or for the benefit of any such Person, or obligations in respect of director and officer insurance (including premiums therefor), (iv) other administrative and operational expenses of any Parent Entity incurred in the ordinary course of business, and (v) fees and expenses incurred by any Parent Entity in connection with any offering of Capital Stock or Indebtedness, (w) which offering is not completed, or (x) where the net proceeds of such offering are intended to be received by or contributed or loaned to the Borrower or a Restricted Subsidiary, or (y) in a prorated amount of such expenses in proportion to the amount of such net proceeds intended to be so received, contributed or loaned, or (z) otherwise on an interim basis prior to completion of such offering so long as any Parent Entity shall cause the amount of such expenses to be repaid to the Borrower or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed.

"Participant": as defined in Subsection 11.6(c)(i).

"Participant Register": as defined in Subsection 11.6(b)(vi).

"Patriot Act": as defined in Subsection 11.18.

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor thereto).

"Permitted Encumbrances": (i) those liens, encumbrances and other matters affecting title to any Mortgaged Fee Property listed in the Mortgage Policies in respect thereof and found, on the date of delivery of such Mortgage Policies to the Collateral Agent in accordance with the terms hereof, reasonably acceptable by the Collateral Agent, (ii) zoning, building codes, land use and other similar laws and municipal ordinances which are not violated in any material respect by the existing improvements and the present use by the mortgagor of the Premises (as defined in the respective Mortgage) and (iii) such other items to which the Collateral Agent may consent (such consent not to be unreasonably withheld).

"Permitted Holders": (i) holders of the Capital Stock of New Holdings on the Closing Date and their respective Affiliates and Controlled Investment Affiliates and (ii) the Management Investors and their respective Affiliates.

"Permitted Investment": an Investment by the Borrower or any Restricted Subsidiary in, or consisting of, any of the following:

(i) subject to the terms of the Intercompany Subordination Agreement, a Restricted Subsidiary, the Borrower, or a Person that will, upon the making of such Investment, become a Restricted Subsidiary (and any Investment held by such Person that was not acquired by such Person in contemplation of so becoming a Restricted Subsidiary); provided that any Investment in a Restricted Subsidiary which is not a Subsidiary Guarantor shall not exceed an amount equal to 10.0% of Consolidated Total Assets at any time;

(ii) another Person if as a result of such Investment such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary (and, in each case, any Investment held by such other Person that was not acquired by such Person in contemplation of such merger, consolidation or transfer);

(iii) Temporary Cash Investments, Investment Grade Securities or Cash Equivalents;

(iv) receivables owing to the Borrower or any Restricted Subsidiary, if created or acquired in the ordinary course of business;

(v) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with Subsection 8.4;

(vi) securities or other Investments received in settlement of debts created in the ordinary course of business and owing to, or of other claims asserted by, the Borrower or any Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments, including in connection with any bankruptcy proceeding or other reorganization of another Person;

(vii) Investments in existence or made pursuant to legally binding written commitments in existence on the Closing Date and set forth on Schedule 1.1(c);

(viii) Currency Agreements, Interest Rate Agreements, Commodities Agreements and related Hedging Obligations, which obligations are Incurred in compliance with Subsection 8.1;

(ix) pledges or deposits (x) with respect to leases or utilities provided to third parties in the ordinary course of business or (y) otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Subsection 8.6;

(x) any promissory note issued by the Borrower, or any Parent Entity;

(xi) bonds secured by assets leased to and operated by the Borrower or any Restricted Subsidiary that were issued in connection with the financing of such assets so long as the Borrower or any Restricted Subsidiary may obtain title to such assets at any time by paying a nominal fee, canceling such bonds and terminating the transaction;

(xii) an Investment in New Holdings of the type referred to in Subsection 8.2(a)(v)(x) herein;

(xiii) any Investment to the extent made using Capital Stock of New Holdings (other than Disqualified Stock), or Capital Stock of any Parent Entity, as consideration;

(xiv) Management Advances;

(xv) Investments in Related Businesses in an aggregate amount outstanding at any time not to exceed $10,000,000;

(xvi) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Subsection 8.5(b) (except transactions described in clauses (i), (ii)(4), (iii), (v), (vi) and (ix) therein), including any Investment pursuant to any transaction described in Subsection 8.5(b)(ii) (whether or not any Person party thereto is at any time an Affiliate of the Borrower);

(xvii) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable; and

(xviii) other Investments in an aggregate amount outstanding at any time not to exceed an amount equal to the greater of $10,000,000 and 5.0% of Consolidated Total Assets.

If any Investment pursuant to clause (xv) or (xviii) above, or Subsection 8.2(b)(vi), as applicable, is made in any Person that is not a Restricted Subsidiary and such Person thereafter (A) becomes a Restricted Subsidiary or (B) is merged or consolidated into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, then such Investment shall thereafter be deemed to have been made pursuant to clause (i) or (ii) above, respectively, and not clause (xv) or (xviii) above, or Subsection 8.2(b)(vi), as applicable.

"Permitted Liens":

(a) Liens for taxes, assessments or other governmental charges not yet delinquent or the nonpayment of which in the aggregate would not reasonably be expected to have a material adverse effect on the Borrower and its Restricted Subsidiaries or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower or a Subsidiary thereof, as the case may be, in accordance with GAAP;

(b) Liens with respect to outstanding motor vehicle fines and carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other like Liens arising in the ordinary course of business in respect of obligations that are not overdue for a period of more than sixty (60) days or that are bonded or that are being contested in good faith and by appropriate proceedings;

(c) pledges, deposits or Liens in connection with workers' compensation, professional liability insurance, insurance programs, unemployment insurance and other social security and other similar legislation or other insurance related obligations (including, without limitation, pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements);

(d) pledges, deposits or Liens to secure the performance of bids, tenders, trade, government or other contracts (other than for borrowed money), obligations for utilities, leases, licenses, statutory obligations, completion guarantees, surety, judgment, appeal or performance bonds, other similar bonds, instruments or obligations, and other obligations of a like nature incurred in the ordinary course of business;

(e) (i) easements (including reciprocal easement agreements), rights-of-way, building, zoning and similar restrictions, utility agreements, covenants, reservations, restrictions, encroachments, charges, and other similar encumbrances or title defects incurred, or leases or subleases granted to others, in the ordinary course of business, that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole and (ii) Permitted Encumbrances;

(f) Liens existing on, or provided for under written arrangements existing on, the Closing Date and set forth on Schedule 1.1(d), or (in the case of any such Liens securing

Indebtedness of the Borrower or any of its Subsidiaries existing or arising under written arrangements existing on the Closing Date) securing any Refinancing Indebtedness in respect of such Indebtedness, so long as the Lien securing such Refinancing Indebtedness is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or under such written arrangements could secure) the original Indebtedness;

(g) (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord or other third party on property over which the Borrower or any Restricted Subsidiary of the Borrower has easement rights or on any leased property and subordination or similar agreements relating thereto and (ii) any condemnation or eminent domain proceedings affecting any real property;

(h) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) consisting of Hedging Obligations, Bank Products Obligations (but only to the extent secured by Collateral), Purchase Money Obligations or Capitalized Lease Obligations Incurred in compliance with Subsection 8.1; provided that Liens securing Hedging Obligations that do not constitute Secured Hedging Obligations shall not exceed $10,000,000;

(i) Liens arising out of judgments, decrees, orders or awards in respect of which the Borrower or any Restricted Subsidiary shall in good faith be prosecuting an appeal or proceedings for review, which appeal or proceedings shall not have been finally terminated, or if the period within which such appeal or proceedings may be initiated shall not have expired;

(j) leases, subleases, licenses or sublicenses to or from third parties;

(k) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) consisting of (1) Indebtedness Incurred in compliance with Subsection 8.1(b)(i) pursuant to (a) this Agreement and the other Loan Documents, (b) the ABL Facility, (c) Subordinated Notes and (d) any Additional Obligations (and any Refinancing Indebtedness in respect thereof), provided, that any Liens on Collateral pursuant to this clause (k)(1) shall be subject to the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, a Junior Lien Intercreditor Agreement or an Other Intercreditor Agreement, (2) Indebtedness Incurred in compliance with clauses (b)(iv), (b)(v), (b)(vii), (b)(viii), or clauses (b)(iii)(A) and (B) of Subsection 8.1 (other than Refinancing Indebtedness Incurred in respect of Indebtedness described in Subsection 8.1(a)), (3) any Indebtedness Incurred in compliance with Subsection 8.1(b)(xiii), provided that any Liens securing such Indebtedness shall rank junior to the Liens securing the Term Loan Facility Obligations and shall be subject to [a Junior Lien Intercreditor Agreement or] an Other Intercreditor Agreement, (4) (A) Acquisition Indebtedness Incurred in compliance with Subsection 8.1(b)(x) or (xi), provided that (x) such Liens are limited to all or part of the same property or assets, including Capital Stock (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) acquired, or of any Person acquired or merged or consolidated with or into the Borrower or any Restricted Subsidiary, in any transaction to which such Acquisition Indebtedness relates or (y) on the date of the Incurrence of such Indebtedness after giving effect to such Incurrence, the Consolidated Secured Leverage Ratio would equal or be less than the Consolidated Secured Leverage Ratio immediately prior to giving effect thereto or (B) any Refinancing Indebtedness

Incurred in respect thereof or (5) Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor (limited, in the case of this clause (k)(5), to Liens on any of the property and assets of any Restricted Subsidiary that is not a Subsidiary Guarantor; in each case under the foregoing clauses (1) through (5) including Liens securing any Guarantee of any thereof;

(l) Liens existing on property or assets of a Person at the time such Person becomes a Subsidiary of the Borrower (or at the time the Borrower or a Restricted Subsidiary acquires such property or assets, including any acquisition by means of a merger or consolidation with or into the Borrower or any Restricted Subsidiary); provided, however, that such Liens are not created in connection with, or in contemplation of, such other Person becoming such a Subsidiary (or such acquisition of such property or assets), and that such Liens are limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which such Liens arose, would be required to secure) the obligations to which such Liens relate; provided, further, that for purposes of this clause (l), if a Person other than the Borrower is the Successor Borrower with respect thereto, any Subsidiary thereof shall be deemed to become a Subsidiary of the Borrower, and any property or assets of such Person or any such Subsidiary shall be deemed acquired by the Borrower or a Restricted Subsidiary, as the case may be, when such Person becomes such Successor Borrower;

(m) Liens on Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(n) any encumbrance or restriction (including, but not limited to, pursuant to put and call agreements or buy/sell arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(o) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) consisting of Refinancing Indebtedness (other than any Indebtedness described in clause (k)(1) above of this definition) Incurred in respect of any Indebtedness secured by, or securing any refinancing, refunding, extension, renewal or replacement (in whole or in part) of any other obligation secured by, any other Permitted Liens, provided that any such new Lien is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, would be required to secure) the obligations to which such Liens relate;

(p) Liens (1) arising by operation of law (or by agreement to the same effect) in the ordinary course of business, (2) on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets, (3) [reserved], (4) on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent that such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose, (5) securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities (including in connection with purchase orders and other agreements with customers), (6) in favor of the Borrower or any

Subsidiary (other than Liens on property or assets of the Borrower or any Subsidiary Guarantor in favor of any Subsidiary that is not a Subsidiary Guarantor), (7) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business, (8) on inventory or other goods and proceeds securing obligations in respect of bankers' acceptances issued or created to facilitate the purchase, shipment or storage of such inventory or other goods, (9) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft, cash pooling or similar obligations incurred in the ordinary course of business; or (10) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business;

(q) other Liens securing obligations that do not exceed an amount equal to the greater of $10,000,000 and 5.0% of Consolidated Total Assets at any time outstanding;

(r) Liens securing Indebtedness incurred under Subsection 8.1(b)(v)(y);

(s) Liens on Inventory and Accounts in favor of Encana, but only so long as Encana has executed and delivered to the Agents the Encana Intercreditor Agreement subordinating its Liens on the Inventory and Accounts to Collateral Agent's Liens; and

(t) Liens on the SBI Heat Treat Line Collateral (as defined in the Plan of Reorganization) (i) to be retained by the SBI Lender (as defined in the Plan of Reorganization), in the event its secured claim is reinstated, or (ii) to secure the SBI Secured Notes in favor of any holder of an SBI Secured Note (as defined in the Plan of Reorganization).

For purposes of determining compliance with this definition, (x) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but may be incurred under any combination of such categories (including in part under one such category and in part under any other such category), (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Borrower shall, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition and (z) in the event that a portion of Indebtedness secured by a Lien could be classified as secured in part pursuant to clause (k)(1) above in respect of Indebtedness Incurred pursuant to Subsection 8.1(b)(i)(IV) and the Maximum Incremental Facilities Amount (giving effect to the Incurrence of such portion of such Indebtedness), the Borrower, in its sole discretion, may classify such portion of such Indebtedness (and any Obligations in respect thereof) as having been secured pursuant to clause (k)(1) above in respect of Indebtedness Incurred pursuant to Subsection 8.1(b)(i)(IV) and the Maximum Incremental Facilities Amount and the remainder of the Indebtedness as having been secured pursuant to one or more of the other clauses of this definition.

"Permitted Payment": as defined in Subsection 8.2(b).

"Permitted Tax Distribution": tax distributions by the Borrower to direct members of the Borrower at such times and in such amounts that are pursuant to and in accordance with Section 5.3 of the Limited Liability Company Agreement, taking into account any amendment, supplement or replacement of the Limited Liability Company Agreement occurring after the Closing Date with the consent of the Administrative Agent.

"Person": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"PIK Interest": as defined in Subsection 4.1(a).

"Plan": at a particular time, any employee benefit plan which is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is an "employer" as defined in Section 3(5) of ERISA.

"Plan Effective Date": the "Effective Date" as defined in the Plan of Reorganization.

"Plan of Reorganization": as defined in the recitals to this Agreement.

"Platform": as defined in Subsection 7.2.

"Preferred Stock": as applied to the Capital Stock of any corporation, Capital Stock of any class or classes (however designated) that by its terms is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"Prepayment Date": as defined in Subsection 4.4(e).

"Prepayment Premium": as defined in Subsection 4.4(b).

"Public Lender": as defined in Subsection 7.2.

"Purchase": as defined in clause (4) of the definition of "Consolidated Coverage Ratio".

"Purchase Money Obligations": any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets, and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

"Rating Agency": Moody's or S&P or, if Moody's or S&P or both shall not make a rating on the Term Loans publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower which shall be substituted for Moody's or S&P or both, as the case may be.

"Receivable": a right to receive payment pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay, as determined in accordance with GAAP.

"Recipient": 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.

"Recovery Event": any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Loan Party giving rise to Net Available Cash to such Loan Party, as the case may be, in excess of $500,000 per year to the extent that such settlement or payment does not constitute reimbursement or compensation for amounts previously paid by the Borrower or any other Loan Party in respect of such casualty or condemnation.

"refinance": refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell or extend (including pursuant to any defeasance or discharge mechanism); and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in this Agreement shall have a correlative meaning.

"Refinancing Agreement": as defined in Subsection 8.3(c).

"Refinancing Indebtedness": Indebtedness that is Incurred to refinance Indebtedness Incurred pursuant to this Agreement and the Loan Documents, the ABL Facility and any Indebtedness existing on the Closing Date and set forth on Schedule 8.1 or Incurred in compliance with this Agreement (including Indebtedness of the Borrower that refinances Indebtedness of any Restricted Subsidiary (to the extent permitted in this Agreement) and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; provided that (1) the Refinancing Indebtedness (x) has a final Stated Maturity at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the final Stated Maturity of the Indebtedness being refinanced (or, if shorter, the Maturity Date of any Loans), (y) has a weighted average life to maturity at the time such Refinancing Indebtedness is Incurred that is equal to or longer than the weighted average life to maturity of the Indebtedness being refinanced (or, if shorter, the weighted average life to maturity of any Loans) and (z) is subordinated in right of payment to the Term Loan Facility Obligations to the same extent as the Indebtedness being refinanced, (2) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced, plus (y) fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such Refinancing Indebtedness, (3) Refinancing Indebtedness shall not include (x) Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor that refinances Indebtedness of the Borrower or a Subsidiary Guarantor that could not have been initially Incurred by such Restricted Subsidiary pursuant to Subsection 8.1 or (y) Indebtedness of the Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary, and (4) if the Indebtedness being refinanced constitutes Additional Obligations or Term Loan Facility Obligations incurred pursuant to Subsection 8.1(b)(i)(IV)(a) (or Refinancing Indebtedness in respect of the foregoing Indebtedness), (w) the Refinancing Indebtedness complies with the requirements of the definition of "Additional Obligations", (x) if the Indebtedness being refinanced is unsecured, the Refinancing Indebtedness is unsecured, (y) if the Indebtedness being refinanced is secured by a Lien ranking junior to the Liens securing the Term Loan Facility Obligations, the Refinancing Indebtedness is unsecured or secured by a Lien ranking junior to the Liens securing the Term Loan Facility Obligations and (z) if the Indebtedness being refinanced constitutes Term Loan Facility Obligations of the type described above in this clause

(4), the Refinancing Indebtedness is incurred pursuant to (and evidenced by) Additional Obligations Documents (and not this Agreement and the other Loan Documents).

"Refunding Capital Stock": as defined in Subsection 8.2(b)(i).

"Register": as defined in Subsection 11.6(b)(v).

"Regulation S-X": Regulation S-X promulgated by the United States Securities and Exchange Commission, as in effect on the Closing Date.

"Regulation T": Regulation T of the Board as in effect from time to time.

"Regulation U": Regulation U of the Board as in effect from time to time.

"Regulation X": Regulation X of the Board as in effect from time to time.

"Reinvestment Period": as defined in Subsection 8.4(b)(i).

"Related Business": those businesses in which the Borrower or any of its Subsidiaries is engaged on the Closing Date, or that are similar, related, complementary, incidental or ancillary thereto or extensions, developments or expansions thereof.

"Related Parties": with respect to any Person, such Person's Affiliates and the partners, officers, directors, trustees, employees, employees, shareholders, members, attorneys and other advisors, agents, representatives and controlling persons of such Person and of such Person's Affiliates and "Related Party" shall mean any of them.

"Related Taxes": any taxes, charges or assessments, including but not limited to sales, use, transfer, rental, ad valorem, value added, stamp, property, consumption, franchise, license, capital, net worth, gross receipts, excise, occupancy, intangibles or similar taxes, charges or assessments (other than federal, state or local taxes measured by income and federal, state or local withholding imposed by any government or other taxing authority on payments made by any Parent Entity other than to another Parent Entity), required to be paid by any Parent Entity by virtue of its being incorporated or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than the Borrower, any of its Subsidiaries or any Parent Entity), or being a holding company parent of the Borrower, any of its Subsidiaries or any Parent Entity or receiving dividends from or other distributions in respect of the Capital Stock of the Borrower, any of its Subsidiaries or any Parent Entity, or having guaranteed any obligations of the Borrower or any Subsidiary thereof, or having made any payment in respect of any of the items for which the Borrower or any of its Subsidiaries is permitted to make payments to any Parent Entity pursuant to Subsection 8.2, or acquiring, developing, maintaining, owning, prosecuting, protecting or defending its intellectual property and associated rights (including but not limited to receiving or paying royalties for the use thereof) relating to the business or businesses of the Borrower or any Subsidiary thereof.

"Reorganization": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Reorganization Documents": (a) the Plan of Reorganization, (b) a certificate issued by an officer of the Borrower regarding assumption the Material Contracts (as defined in the ABL Credit Agreement), transaction costs, and cure claims, (c) a certified copy of the docket showing entry of the Confirmation Order and showing that no appeals or motions to modify were filed within fourteen days of the date on which the Confirmation Order was entered into the docket and (d) a filing of notice of occurrence of Plan Effective Date and such other documents relating to the Bankruptcy Case as the Administrative Agent may reasonably require.

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the 30 day notice period is waived under Section 21, 22, 23, 24, 25, 27 or 28 of PBGC Regulation Section 4043 or any successor regulation thereto.

"Required Lenders": Lenders, the sum of whose outstanding Individual Lender Exposures represents more than 50% of the sum of the Individual Lender Exposures at such time. The Individual Lender Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Requirement of Law": as to any Person, the Organizational Documents of such Person, and any law, statute, ordinance, code, decree, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its material property or to which such Person or any of its material property is subject, including laws, ordinances and regulations pertaining to zoning, occupancy and subdivision of real properties; provided that the foregoing shall not apply to any non-binding recommendation of any Governmental Authority.

"Responsible Officer": as to any Person, any of the following officers of such Person: (a) the chief executive officer or the president of such Person and, with respect to financial matters, the chief financial officer, the treasurer or the controller of such Person, (b) any vice president of such Person or, with respect to financial matters, any assistant treasurer or assistant controller of such Person, in each case who has been designated in writing to the Administrative Agent or the Collateral Agent as a Responsible Officer by such chief executive officer or president of such Person or, with respect to financial matters, by such chief financial officer of such Person, (c) with respect to Subsection 7.7 and without limiting the foregoing, the general counsel of such Person and (d) with respect to ERISA matters, the senior vice president–human resources (or substantial equivalent) of such Person.

"Restricted Payment": as defined in Subsection 8.2(a).

"Restricted Payment Transaction": any Restricted Payment permitted pursuant to Subsection 8.2, any Permitted Payment, any Permitted Investment, or any transaction specifically excluded from the definition of the term "Restricted Payment" (including pursuant to the exception contained in clause (i) of such definition and the parenthetical exclusions contained in clauses (ii) and (iii) of such definition).

"Restricted Subsidiary": any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

"S&P": Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sale": as defined in clause (3) of the definition of "Consolidated Coverage Ratio".

"Sanctioned Country": at any time, a country, region or territory that is, or whose government is, the subject or target of any Sanctions.

"Sanctioned Person": at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

"Sanctions": economic or financial sanctions or trade embargoes administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"SEC": the Securities and Exchange Commission.

"Secured Hedging Obligations": Hedging Obligations provided by any Person that is a Lender, an Affiliate of a Lender or a lender or Affiliate of a lender under the ABL Facility.

"Secured Parties": the "Secured Parties" as defined in the Guarantee and Collateral Agreement.

"Securities Act": the Securities Act of 1933, as amended from time to time.

"Security Documents": the collective reference to each Mortgage related to any Mortgaged Fee Property, the Guarantee and Collateral Agreement and all other similar security documents hereafter delivered to the Collateral Agent granting or perfecting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Loan Parties hereunder and/or under any of the other Loan Documents or to secure any guarantee of any such obligations and liabilities, including any security documents executed and delivered or caused to be delivered to the Collateral Agent pursuant to Subsection 7.9(a), 7.9(b), 7.9(c) or 7.9(d), in each case, as amended, restated, supplemented, waived or otherwise modified from time to time.

"Set": the collective reference to Eurodollar Loans of a single Tranche, the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Eurodollar Loans shall originally have been made on the same day).

"Settlement Service": as defined in Subsection 11.6(b).

"Single Employer Plan": any Plan which is covered by Title IV or Section 302 of ERISA or Section 412 of the Code, but which is not a Multiemployer Plan.

"Solvent" and "Solvency": with respect to the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions on the Closing Date, means (i) the Fair Value and Present Fair Salable Value of the assets of the Borrower and its Subsidiaries taken as a whole exceed their Stated Liabilities and Identified Contingent Liabilities; (ii) the Borrower and its Subsidiaries taken as a whole do not have Unreasonably Small Capital; and (iii) the Borrower and its Subsidiaries taken as a whole will be able to pay their Stated Liabilities and Identified Contingent Liabilities as they mature (all capitalized terms used in this definition other than "Borrower" and "Subsidiary" shall have the meaning assigned to such terms in the form of solvency certificate attached hereto as Exhibit H).

"Specified Existing Term Tranche": as defined in Subsection 2.8(a).

"Stated Maturity": with respect to any Indebtedness, the date specified in such Indebtedness as the fixed date on which the payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase or repayment of such Indebtedness at the option of the holder thereof upon the happening of any contingency).

"Subordinated Notes": the Indebtedness under the Subordinated Notes Documents.

"Subordinated Notes Agreement": that certain Credit Agreement dated as of the Closing Date among Borrower, Subordinated Term Agent and the lenders party thereto, as amended, restated, replaced or otherwise modified from time to time to the extent no prohibited by the Subordinated Notes Intercreditor Agreement.

"Subordinated Notes Documents": (i) the "Loan Documents" and the "Security Documents", in each case as defined in the Subordinated Notes Agreement and (ii) each other document securing or evidencing the Subordinated Notes, in each case as amended, restated, replaced or otherwise modified from time to time to the extent not prohibited by the Subordinated Notes Intercreditor Agreement.

"Subordinated Notes Intercreditor Agreement": that certain Subordination and Intercreditor Agreement dated as of the Closing Date among Subordinated Term Agent, the Agents, the Loan Parties and ABL Agent, as amended, restated, supplemented, waived, extended, renewed, replaced or otherwise modified from time to time as permitted therein.

"Subordinated Obligations": any Indebtedness of the Borrower (whether outstanding on the Closing Date or thereafter Incurred) that is expressly subordinated in right of payment to the Term Loan Facility Obligations pursuant to a written agreement.

"Subordinated Term Agent": Cortland Capital Market Services LLC, as administrative agent and collateral agent for the lenders under the Subordinated Notes Agreement.

"Subsection 2.8 Additional Amendment": as defined in Subsection 2.8(c).

"Subsidiary": as to any Person, a corporation, partnership, limited liability company or other entity (a) of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other managers of such corporation, partnership, limited liability company or other entity are at the time owned by such Person, or (b) the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person and, in the case of this clause (b), which is treated as a consolidated subsidiary for accounting purposes. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantor": each Domestic Subsidiary that is a Wholly Owned Subsidiary (other than any Excluded Subsidiary) of the Borrower which executes and delivers a Subsidiary Guaranty pursuant to Subsection 7.9 or otherwise, in each case, unless and until such time as the respective Subsidiary Guarantor (a) ceases to constitute a Domestic Subsidiary of the Borrower in accordance with the terms and provisions hereof, (b) is designated an Unrestricted Subsidiary pursuant to the terms of this Agreement or (c) is released from all of its obligations under the Subsidiary Guaranty in accordance with terms and provisions thereof.

"Subsidiary Guaranty": the guaranty of the Term Loan Facility Obligations of the Borrower under the Loan Documents provided pursuant to the Guarantee and Collateral Agreement.

"Successor Borrower": as defined in Subsection 8.7(a)(i).

"Supplemental Term Loan Commitments": as defined in Subsection 2.6(a).

"Tax Restructuring Agreements": (i) the installment agreement for the payment of delinquent taxes between Borrower and the Liberty County Tax Assessor-Collector's Office, dated as of [_____], and (ii) the installment agreement for the payment of delinquent taxes between Borrower and the [Liberty City and School District Tax Assessor-Collector's Office], dated as of [_____].

"Tax Sharing Agreement": any Tax Sharing Agreement entered into between the Borrower and New Holdings and/or any Parent Entity, in form and substance reasonably satisfactory to the Administrative Agent, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Taxes": any and all present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority.

"Temporary Cash Investments": any of the following: (i) any investment in (x) direct obligations of the United States of America, a member state of the European Union or any country in whose currency funds are being held pending their application in the making of an investment or capital expenditure by the Borrower or a Restricted Subsidiary in that country or with such funds, or any agency or instrumentality of any thereof, or obligations Guaranteed by the United States of America or a member state of the European Union or any country in whose

currency funds are being held pending their application in the making of an investment or capital expenditure by the Borrower or a Restricted Subsidiary in that country or with such funds, or any agency or instrumentality of any of the foregoing, or obligations guaranteed by any of the foregoing or (y) direct obligations of any foreign country recognized by the United States of America rated at least "A" by S&P or "A-1" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (ii) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by (x) any bank or other institutional lender under this Agreement or any ABL Facility or any affiliate thereof or (y) a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital and surplus aggregating in excess of $250,000,000 (or the foreign currency equivalent thereof) and whose long term debt is rated at least "A" by S&P or "A-1" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization) at the time such Investment is made, (iii) repurchase obligations with a term of not more than 30 days for underlying securities or instruments of the types described in clause (i) or (ii) above entered into with a bank meeting the qualifications described in clause (ii) above, (iv) Investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than that of the Borrower or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (v) Investments in securities maturing not more than one year after the date of acquisition issued or fully guaranteed by any state, commonwealth or territory 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, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (vi) Indebtedness or Preferred Stock (other than of the Borrower or any of its Subsidiaries) having a rating of "A" or higher by S&P or "A2" or higher by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (vii) investment funds investing 95.0% of their assets in securities of the type described in clauses (i) through (vi) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution), and (viii) any money market deposit accounts issued or offered by a domestic commercial bank or a commercial bank organized and located in a country recognized by the United States of America, in each case, having capital and surplus in excess of $250,000,000 (or the foreign currency equivalent thereof), or investments in money market funds subject to the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the Investment Company Act of 1940, as amended.

"Term Loan Facility Obligations": obligations of the Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during (or that would accrue but for) the pendency of any bankruptcy, insolvency, receivership or other similar

proceeding, regardless of whether allowed or allowable in such proceeding) on the Term Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower and the other Loan Parties under this Agreement and the other Loan Documents.

"Term Loan Priority Collateral": as defined in the ABL/Term Loan Intercreditor Agreement.

"Term Loans": the Initial Term Loans, Incremental Term Loans and Extended Term Loans, as the context shall require.

"Total Liquidity": at any time, the sum of (a) the aggregate amount available to be borrowed by any Loan Party under the ABL Facility and any other revolving credit facility plus (b) the Unrestricted Cash of the Borrower and its Restricted Subsidiaries.

"Trade Payable Restructuring Agreements": restructuring agreements between Borrower and [_____] and [_____], dated as of [_____].[3]

"Trade Payables": with respect to any Person, any accounts payable or any indebtedness or monetary obligation to trade creditors created, assumed or guaranteed by such Person arising in the ordinary course of business in connection with the acquisition of goods or services.

"Tranche": with respect to Term Loans or commitments, refers to whether such Term Loans or commitments are (1) Initial Term Loans or Initial Term Loan Commitments, (2) Incremental Loans or Incremental Commitments with the same terms and conditions made on the same day or (3) Extended Term Loans (of the same Extension Series).

"Transactions": collectively, any or all of the following: (i) the entry into this Agreement and the Loan Documents and the Incurrence of Indebtedness thereunder, (ii) the consummation of the Plan of Reorganization, (iii) the refinancing of outstanding Indebtedness with proceeds of the Term Loans and loans under the ABL Facility and (iv) all other transactions relating to any of the foregoing (including payment of fees and expenses related to any of the foregoing).

"Transferee": any Participant or Assignee.

"Treasury Capital Stock": as defined in Subsection 8.2(b)(i).

"Treasury Rate": [as of any date of any voluntary or mandatory prepayment of the Term Loans pursuant to Subsection 4.4(a), the yield to maturity as of such date of the United States Treasury securities with a constant maturity (as compiled and published in the most recent

[3] NTD: Agreements to be described once finalized

Federal Reserve Board H.15 statistical release (or any successor thereto) that has become publicly available at least two Business Days prior to such date (or, if such statistical release is no longer published, any publicly available source of similar market data)) most nearly equal to the period from such date to the first day after the end of the Non-Call Period; provided, however, that if the period from such date to the first day after the end of the Non-Call Period is less than one year, the weekly average yield on actually traded United States Treasury securities adjusted to a constant maturity of one year will be used.]

"Type": the type of Term Loan determined based on the interest option applicable thereto, with there being two Types of Term Loans hereunder, namely ABR Loans and Eurodollar Loans.

"UCC": the Uniform Commercial Code as in effect in the State of New York from time to time.

"Underfunding": the excess of the present value of all accrued benefits under a Plan (based on those assumptions used to fund such Plan), determined as of the most recent annual valuation date, over the value of the assets of such Plan allocable to such accrued benefits.

"United States Person": any United States person within the meaning of Section 7701(a)(30) of the Code.

"Unrestricted Cash": the aggregate amount of cash, Cash Equivalents and Temporary Cash Investments included in the cash accounts that would be listed on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries prepared in accordance with GAAP as of the end of the Most Recent Four Quarter Period to the extent such cash is not classified as "restricted" for financial statement purposes (excluding, however, proceeds from any Incurrence of Incremental Term Loans that are not (in the good faith judgment of the Borrower) intended to be used for working capital purposes at the date of determination).

"Unrestricted Subsidiary": (i) any Subsidiary of the Borrower that at the time of determination is an Unrestricted Subsidiary, as designated by the Board of Directors in the manner provided below, and (ii) any Subsidiary of an Unrestricted Subsidiary. The Board of Directors may designate any Subsidiary of the Borrower (including any newly acquired or newly formed Subsidiary of the Borrower) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Capital Stock or Indebtedness of, or owns or holds any Lien on any property of, the Borrower or any other Restricted Subsidiary of the Borrower that is not a Subsidiary of the Subsidiary to be so designated or such Subsidiary was previously designated as an Unrestricted Subsidiary and subsequently designated as a Restricted Subsidiary; provided, that (A) such designation was made at or prior to the Closing Date, or (B) the Subsidiary to be so designated has total consolidated assets of $1,000 or less or (C) if such Subsidiary has consolidated assets greater than $1,000, then such designation would be permitted under Subsection 8.2 and (D) immediately before and after such designation, no Event of Default shall have occurred and be continuing. The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, that immediately after giving effect to such

designation (x) the Borrower could Incur at least $1.00 of additional Indebtedness under Subsection 8.1(a), (y) the Consolidated Coverage Ratio would be greater than it was immediately prior to giving effect to such designation or and (z) immediately before and after such designation, no Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Administrative Agent by promptly filing with the Administrative Agent a copy of the resolution of the Borrower's Board of Directors giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing provisions.

"U.S. Tax Compliance Certificate": as defined in Subsection 4.11(b)(ii)(2).

"Voting Stock": as to any entity, all classes of Capital Stock of such entity then outstanding and normally entitled to vote in the election of directors or all interests in such entity with the ability to control the management or actions of such entity.

"Wholly Owned Subsidiary": as to any Person, any Subsidiary of such Person of which such Person owns, directly or indirectly through one or more Wholly Owned Subsidiaries, all of the Capital Stock of such Subsidiary other than directors qualifying shares or shares held by nominees.

1.2 Other Definitional Provisions. Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in any Notes, any other Loan Document or any certificate or other document made or delivered pursuant hereto.

(a) As used herein and in any Notes and any other Loan Document, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Borrower and its Restricted Subsidiaries not defined in Subsection 1.1 and accounting terms partly defined in Subsection 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(b) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Subsection, Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(c) Any financial ratios, including any required to be satisfied in order for a specific action to be permitted under this Agreement, shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

(d) Any references in this Agreement to "cash and/or Cash Equivalents", "cash, Cash Equivalents and/or Temporary Cash Investments" or any similar combination of the foregoing shall be construed as not double counting cash or any other applicable amount which would otherwise be duplicated therein.

(e) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2

Amount and Terms of Commitments

2.1 Initial Term Loans. Subject to the terms and conditions hereof, each Lender holding an Initial Term Loan Commitment severally agrees to make, in Dollars, in a single draw on the Closing Date, one or more term loans (each, an "Initial Term Loan") to the Borrower in an aggregate principal amount not to exceed the amount set forth opposite such Lender's name in Schedule A under the heading "Initial Term Loan Commitment", as such amount may be adjusted or reduced pursuant to the terms hereof, which Initial Term Loans:

(i) except as hereinafter provided, shall, at the option of the Borrower, be incurred and maintained as, and/or converted into, ABR Loans or Eurodollar Loans; and

(ii) shall be made by each such Lender in an aggregate principal amount which does not exceed the Initial Term Loan Commitment of such Lender.

Once repaid, Initial Term Loans incurred hereunder may not be reborrowed. On the Closing Date (after giving effect to the incurrence of Initial Term Loans on such date), the Initial Term Loan Commitment of each Lender shall terminate.

2.2 Notes. (a) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, in order to evidence such Lender's Loan, the Borrower will execute and deliver to such Lender a promissory note in form and substance reasonably acceptable to the Administrative Agent and the Borrower (each, as amended, restated, supplemented, replaced or otherwise modified from time to time, a "Note"), payable to such Lender and in a principal amount equal to the unpaid principal amount of the applicable Loans made (or acquired by assignment pursuant to Subsection 11.6(b)) by such Lender to the Borrower. Each Note shall be payable as provided in Subsection 2.2(b) and provide for the payment of interest in accordance with Subsection 4.1.

(b) The Initial Term Loans of all the Lenders shall be payable on the Maturity Date (subject to reduction as provided in Subsection 4.4).

2.3 Procedure for Initial Term Loan Borrowing. The Borrower shall have given the Administrative Agent written notice in the form of a Committed Loan Notice (which Committed Loan Notice must have been received by the Administrative Agent prior to 9:00 A.M., New York City time, and shall be irrevocable after receipt) on the Closing Date specifying the amount of the Initial Term Loans to be borrowed. Upon receipt of such Committed Loan Notice, the Administrative Agent shall promptly notify each applicable Lender thereof. Each Lender having an Initial Term Loan Commitment will make the amount of its pro rata share of the Initial Term Loan Commitments available to the Administrative Agent, in each case for the account of the Borrower at the office of the Administrative Agent specified in Subsection 11.2 prior to 10:00 A.M., New York City time, on the Closing Date in funds immediately available to the Administrative Agent. The Administrative Agent shall on such date credit the account of the

Borrower on the books of the Administrative Agent with the aggregate of the amounts made available to the Administrative Agent by the Lenders and in like funds as received by the Administrative Agent.

2.4 Procedure for Borrowings Other Than Initial Term Loan Borrowing. Each Borrowing (other than any Borrowing on the Closing Date) shall be made upon the Borrower's irrevocable notice to the Administrative Agent. Each such notice must be received by the Administrative Agent not later than 11:00 a.m. (i) three Business Days prior to the requested date of any Borrowing of, conversion to or continuation of Eurodollar Loans, and (ii) on the requested date of any Borrowing of ABR Loans. Each Borrowing of ABR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof. Each Committed Loan Notice shall specify (i) the requested date of the Borrowing (which shall be a Business Day), (ii) the principal amount of Loans to be borrowed, (iii) the Type of Loans to be borrowed, and (iv) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in a Committed Loan Notice, then the applicable Term Loans shall be made as, or converted to, ABR Loans. Any such automatic conversion to ABR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a Borrowing of Eurodollar Loans in any such Committed Loan Notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

2.5 Repayment of Loans. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent (in the currency in which such Term Loan is denominated) for the account of each Lender the then unpaid principal amount of each Initial Term Loan of such Lender made to the Borrower, on the Maturity Date (or such earlier date on which the Initial Term Loans become due and payable pursuant to Section 9). The Borrower hereby further agrees to pay interest on the unpaid principal amount of such Initial Term Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Subsection 4.1.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of 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.

(c) The Administrative Agent shall maintain the Register pursuant to Subsection 11.6(b), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder, the Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each applicable Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each applicable Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Subsection 2.5(c) shall, to the extent permitted by applicable law, be prima facie evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to

maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

2.6 Incremental Facilities. (a) So long as no Event of Default under Subsection 9.1 (a) or (f) exists or would arise therefrom, the Borrower shall have the right, at any time and from time to time after the Closing Date, (i) to request new term loan commitments under one or more new term loan credit facilities to be included in this Agreement (the "Incremental Term Loan Commitments") and (ii) to increase the Existing Term Loans by requesting new term loan commitments to be added to an existing Tranche of Term Loans (the "Supplemental Term Loan Commitments", and, together with the Incremental Term Loan Commitments, the "Incremental Commitments"), provided that, the aggregate amount of Incremental Commitments permitted pursuant to this Subsection 2.6 shall not exceed, at the time the respective Incremental Commitment becomes effective (and after giving effect to the Incurrence of Indebtedness in connection therewith), the Maximum Incremental Facilities Amount. Any loans made in respect of any such Incremental Term Loan Commitment (other than Supplemental Term Loan Commitments) shall be made by creating a new Tranche. Each Incremental Commitment made available pursuant to this Subsection 2.6 shall be in a minimum aggregate amount of at least $1,000,000 and in integral multiples of $100,000 in excess thereof.

(b) Each request from the Borrower pursuant to this Subsection 2.6 shall set forth the requested amount of the relevant Incremental Commitments. The Incremental Commitments (or any portion thereof) may be made by any existing Lender or by any other bank or financial institution (but in no case by any Defaulting Lender or any of its Subsidiaries) (each, except to the extent excluded pursuant to the foregoing parenthetical, an "Additional Lender"); provided that if such Additional Lender is not already a Lender hereunder or an Affiliate of a Lender hereunder or an Approved Fund, the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required.

(c) Supplemental Term Loan Commitments shall become commitments under this Agreement pursuant to a supplement specifying the Term Loan Tranche to be increased, executed by the Borrower and each increasing Lender and acknowledged by the Administrative Agent substantially in the form attached hereto as Exhibit I-1 (the "Increase Supplement") or by each Additional Lender substantially in the form attached hereto as Exhibit I-2 (the "Lender Joinder Agreement"), as the case may be, which shall be delivered to the Administrative Agent for recording in the Register. Upon effectiveness of the Lender Joinder Agreement each Additional Lender shall be a Lender for all intents and purposes of this Agreement and the term loan made pursuant to such Supplemental Term Loan Commitment shall be a Term Loan.

(d) Incremental Commitments (other than Supplemental Term Loan Commitments) shall become commitments under this Agreement pursuant to an amendment (an "Incremental Commitment Amendment") to this Agreement and, as appropriate, the other Loan Documents, executed by the Borrower and each Additional Lender (with notice thereof to the Administrative Agent, which notice shall be expressly acknowledged by the Administrative Agent in writing as a condition to effectiveness to such Incremental Commitment Amendment). An Incremental Commitment Amendment may, without the consent of any other Lender, effect such amendments to any Loan Documents as may be necessary or appropriate, in the opinion of

the Borrower and the Administrative Agent, to effect the provisions of this Subsection 2.6; provided, however, that (i) (A) the Incremental Commitments will not be guaranteed by any Subsidiary of the Borrower other than the Subsidiary Guarantors, and will be secured on a pari passu or (at the Borrower's option) junior basis by the same Collateral securing the Initial Term Loans (so long as any such Incremental Commitments (and related Obligations) are subject to any Junior Lien Intercreditor Agreement or an Other Intercreditor Agreement), (B) the Incremental Commitments and any incremental loans drawn thereunder (the "Incremental Loans") shall rank pari passu in right of payment with or (at the Borrower's option) junior to the Initial Term Loans and (C) no Incremental Commitment Amendment may provide for (I) any Incremental Commitment or any Incremental Loans to be secured by any Collateral or other assets of any Loan Party that do not also secure the Term Loans and (II) so long as any Initial Term Loans are outstanding, any mandatory prepayment provisions that do not also apply to the Term Loans (other than Incremental Term Loans secured on a junior basis by the Collateral or ranking junior in right of payment, which shall be subject to junior prepayment provisions) on a pro rata basis (or otherwise provide for more favorable prepayment treatment for the Initial Term Loans than such Incremental Term Loans as contemplated by the proviso appearing in Subsection 4.4(c)) (other than, in the case of any customary bridge financing, prepayments of such bridge financing from the issuance of equity or other Indebtedness permitted hereunder), provided that (subject to clause (iii) below) any Incremental Term Loans may provide for more favorable amortization payments than the Initial Term Loans, (ii) no Lender will be required to provide any such Incremental Commitment unless it so agrees; (iii) the maturity date and the weighted average life to maturity of such Incremental Term Loan Commitments shall be no earlier than or shorter than, as the case may be, the Maturity Date or the weighted average life to maturity of the Initial Term Loans, as applicable (other than an earlier maturity date and/or shorter weighted average life to maturity for customary bridge financings, which, subject to customary conditions, would either be automatically converted into or required to be exchanged for permanent financing which does not provide for an earlier maturity date or a shorter weighted average life to maturity than the Maturity Date of the Initial Term Loans or the weighted average life to maturity of the Initial Term Loans, as applicable); (iv) the interest rate margins and amortization schedule applicable to the loans made pursuant to the Incremental Commitments shall be determined by the Borrower and the applicable Additional Lenders; provided that in the event that the applicable interest rate margins for any term loans Incurred by the Borrower under any Incremental Term Loan Commitment are higher than the applicable interest rate margin for the Initial Term Loans by more than 50 basis points, then the Applicable Margin for the Initial Term Loans shall be increased to the extent necessary so that the applicable interest rate margin for the Initial Term Loans is equal to the applicable interest rate margins for such Incremental Term Loan Commitment minus 50 basis points; provided, further that, in determining the applicable interest rate margins for the Initial Term Loans and the Incremental Term Loans, (A) original issue discount ("OID") or upfront fees payable generally to all participating Additional Lenders in lieu of OID (which shall be deemed to constitute like amounts of OID) payable by the Borrower to the Lenders under the Initial Term Loans or any Incremental Term Loan in the initial primary syndication thereof shall be included (with OID being equated to interest based on an assumed four-year life to maturity); (B) any arrangement, structuring or other fees payable in connection with the Incremental Term Loans that are not shared with all Additional Lenders providing such Incremental Term Loans shall be excluded; (C) any amendments to the Applicable Margin on the Initial Term Loans that became effective subsequent to the Closing

Date but prior to the time of such Incremental Term Loans shall also be included in such calculations and (D) if the Incremental Term Loans include an interest rate floor greater than the interest rate floor applicable to the Initial Term Loans, such increased amount shall be equated to the applicable interest rate margin for purposes of determining whether an increase to the Applicable Margin for the Initial Term Loans shall be required, to the extent an increase in the interest rate floor for the Initial Term Loans would cause an increase in the interest rate then in effect thereunder, and in such case the interest rate floor (but not the Applicable Margin) applicable to the Initial Term Loans shall be increased by such amount; (v) such Incremental Commitment Amendment may provide (1) for the inclusion, as appropriate, of Additional Lenders in any required vote or action of the Required Lenders or of the Lenders of each Tranche hereunder, (2) for class voting and other class protections for any additional credit facilities, and (3) for the amendment of the definitions of "Additional Obligations" and "Refinancing Indebtedness", in each case only to extend the maturity date and the weighted average life to maturity requirements, from the Maturity Date of the Initial Term Loans and weighted average life to maturity of the Initial Term Loans to the extended maturity date and the weighted average life to maturity of such Incremental Term Loans, as applicable; (vi) the other terms and documentation in respect thereof, to the extent not consistent with this Agreement as in effect prior to giving effect to the Incremental Commitment Amendment, shall otherwise be reasonably satisfactory to the Borrower; and (vii) no Incremental Term Loans shall (nor shall their proceeds) replace, refinance or refund unsecured Indebtedness or other obligations that are secured by Liens on Collateral junior in priority to those granted under the Security Documents.

2.7 [Reserved].

2.8 Extension of Term Loans. (a) The Borrower may at any time and from time to time request that all or a portion of the Term Loans of one or more Tranches (including any Extended Term Loans) existing at the time of such request (each, an "Existing Term Tranche" and the Term Loans of such Tranche, the "Existing Term Loans") be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of any Existing Term Tranche (any such Existing Term Tranche which has been so extended, an "Extended Term Tranche" and the Term Loans of such Tranche, the "Extended Term Loans" or "Extended Loans") and to provide for other terms consistent with this Subsection 2.8; provided that (i) any such request shall be made in writing by the Borrower to all Lenders with Term Loans with a like maturity date (whether under one or more Tranches) on a pro rata basis (based on the aggregate outstanding principal amount of the applicable Term Loans), and (ii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower. In order to establish any Extended Term Tranche, the Borrower shall provide a written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Term Tranche) (an "Extension Request") setting forth the proposed terms of the Extended Term Tranche to be established, which terms shall be identical to those applicable to the Existing Term Tranche from which they are to be extended (the "Specified Existing Term Tranche"), except (w) all or any of the final maturity dates of such Extended Term Tranches may be delayed to later dates than the final maturity dates of the Specified Existing Term Tranche, (x) (A) the interest margins with respect to the Extended Term Tranche may be higher or lower than the interest margins for the Specified Existing Term Tranche and/or (B) additional fees may be payable to the Lenders providing such Extended Term Tranche in addition to or in lieu of any increased margins contemplated by the preceding clause

(A), in each case to the extent provided in the applicable Extension Amendment, (y) any optional or mandatory prepayment applicable to any Extended Term Tranche may be directed first to the prepayment of the Specified Existing Term Tranche and (z) amortization with respect to the Extended Term Tranche may be greater or lesser than amortization for the Specified Existing Term Tranche; provided that, notwithstanding anything to the contrary in this Subsection 2.8 or otherwise, (1) assignments and participations of Extended Term Tranches shall be governed by the same or, at the Borrower's discretion, more restrictive assignment and participation provisions applicable to Initial Term Loans set forth in Subsection 11.6, and (2) subject to clause (z) above, no repayment of Extended Term Tranches shall be permitted unless such repayment is accompanied by an at least pro rata repayment of all earlier maturing Tranches (including Extended Term Tranches) (or all earlier maturing Tranches (including Extended Term Tranches) shall otherwise be or have been terminated and repaid in full). No Lender shall have any obligation to agree to have any of its Existing Term Loans converted into an Extended Term Tranche pursuant to any Extension Request. Any Extended Term Tranche shall constitute a separate Tranche of Term Loans from the Specified Existing Term Tranches and from any other Existing Term Tranches (together with any other Extended Term Tranches so established on such date).

(b) The Borrower shall provide the applicable Extension Request at least ten (10) Business Days prior to the date on which Lenders under the applicable Existing Term Tranche or Existing Term Tranches are requested to respond. Any Lender (an "Extending Lender") wishing to have all or a portion of its Specified Existing Term Tranche converted into an Extended Term Tranche shall notify the Administrative Agent in writing (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Specified Existing Term Tranche that it has elected to convert into an Extended Term Tranche. In the event that the aggregate amount of the Specified Existing Term Tranche subject to Extension Elections exceeds the amount of Extended Term Tranches requested pursuant to the Extension Request, the Specified Existing Term Tranches subject to Extension Elections shall be converted to Extended Term Tranches on a pro rata basis based on the amount of Specified Existing Term Tranches included in each such Extension Election. In connection with any extension of Term Loans pursuant to this Subsection 2.8 (each, an "Extension"), the Borrower shall agree to such procedures regarding timing, rounding and other administrative adjustments to ensure reasonable administrative management of the credit facilities hereunder after such Extension, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Subsection 2.8.

(c) Extended Term Tranches shall be established pursuant to an amendment (an "Extension Amendment") to this Agreement (which may include amendments to (i) provisions related to maturity, interest margins, fees, amortization or prepayments referenced in clauses (w) through (z) of Subsection 2.8(a) and (ii) the definitions of "Additional Obligations" and "Refinancing Indebtedness" and Subsection 8.8(b) to amend the maturity date and the weighted average life to maturity requirements, from the Maturity Date of the Initial Term Loans and weighted average life to maturity of the Initial Term Loans to the extended maturity date and the weighted average life to maturity of such Extended Term Tranche, as applicable, and which, in each case, except to the extent expressly contemplated by the third to last sentence of this Subsection 2.8(c) and notwithstanding anything to the contrary set forth in Subsection 11.1, shall not require the consent of any Lender other than the Extending Lenders with respect to the

Extended Term Tranches established thereby) executed by the Loan Parties, the Administrative Agent, and the Extending Lenders. No Extension Amendment shall provide for any Extended Term Tranche in an aggregate principal amount that is less than $10,000,000. Notwithstanding anything to the contrary in this Agreement and without limiting the generality or applicability of Subsection 11.1 to any Subsection 2.8 Additional Amendments, any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a "Subsection 2.8 Additional Amendment") to this Agreement and the other Loan Documents; provided that such Subsection 2.8 Additional Amendments do not become effective prior to the time that such Subsection 2.8 Additional Amendments have been consented to (including, without limitation, pursuant to consents applicable to holders of any Extended Term Tranches provided for in any Extension Amendment) by such of the Lenders, Loan Parties and other parties (if any) as may be required in order for such Subsection 2.8 Additional Amendments to become effective in accordance with Subsection 11.1; provided, further, that no Extension Amendment may provide for any Extended Term Tranche to be secured by any Collateral or other assets of any Loan Party that does not also secure the Existing Term Tranches. It is understood and agreed that each Lender has consented for all purposes requiring its consent, and shall at the effective time thereof be deemed to consent to each amendment to this Agreement and the other Loan Documents authorized by this Subsection 2.8 and the arrangements described above in connection therewith except that the foregoing shall not constitute a consent on behalf of any Lender to the terms of any Subsection 2.8 Additional Amendment. In connection with any Extension Amendment, at the request of the Administrative Agent or the Extending Lenders, the Borrower shall deliver an opinion of counsel reasonably acceptable to the Administrative Agent as to the enforceability of such Extension Amendment, this Agreement as amended thereby, and such of the other Loan Documents (if any) as may be amended thereby.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Term Tranche is converted to extend the related scheduled maturity date(s) in accordance with clause (a) above (an "Extension Date"), in the case of the Specified Existing Term Tranche of each Extending Lender, the aggregate principal amount of such Specified Existing Term Tranche shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Term Tranche so converted by such Lender on such date, and such Extended Term Tranches shall be established as a separate Tranche from the Specified Existing Term Tranche and from any other Existing Term Tranches (together with any other Extended Term Tranches so established on such date).

(e) If, in connection with any proposed Extension Amendment, any Lender declines to consent to the applicable extension on the terms and by the deadline set forth in the applicable Extension Request (each such other Lender, a "Non-Extending Lender") then the Borrower may, on written notice to the Administrative Agent and the Non-Extending Lender, (i) replace such Non-Extending Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Subsection 11.6 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to provide Extended Loans on the terms set forth in such Extension Amendment; and provided, further, that all obligations of the Borrower

owing to the Non-Extending Lender relating to the Existing Term Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender concurrently with such Assignment and Acceptance or (ii) if no Event of Default exists under Subsection 9.1(a) or (f), upon notice to the Administrative Agent, prepay the Existing Term Loans, in whole or in part (including any premium or penalty), subject to Subsection 4.12. In connection with any such replacement under this Subsection 2.8, if the Non-Extending Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (A) the date on which the replacement Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (B) the date as of which all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Term Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender, then such Non-Extending Lender shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date, the Administrative Agent shall record such assignment in the Register and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Non-Extending Lender.

(f) Following any Extension Date but prior to the Maturity Date with respect to the Term Loans of such Non-Extending Lender, with the written consent of the Borrower, any Non-Extending Lender may elect to have all or a portion of its Existing Term Loans deemed to be an Extended Term Loan under the applicable Extended Term Tranche on any date (each date a "Designation Date") prior to the maturity date of such Extended Term Tranche; provided that (i) such Lender shall have provided written notice to the Borrower and the Administrative Agent at least 10 Business Days prior to such Designation Date (or such shorter period as the Administrative Agent may agree in its reasonable discretion) and (ii) except as set forth in Subsection 2.8(c), no more than three Designation Dates may occur in any one year period without the written consent of the Administrative Agent. Following a Designation Date, the Existing Term Loans held by such Lender so elected to be extended will be deemed to be Extended Term Loans of the applicable Extended Term Tranche, and any Existing Term Loans held by such Lender not elected to be extended, if any, shall continue to be "Existing Term Loans" of the applicable Tranche.

(g) With respect to all Extensions consummated by the Borrower pursuant to this Subsection 2.8, (i) such Extensions shall not constitute optional or mandatory payments or prepayments for purposes of Subsection 4.4 and (ii) no Extension Request is required to be in any minimum amount or any minimum increment, provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrower's sole discretion and may be waived by the Borrower) of Existing Term Loans of any or all applicable Tranches be extended. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Subsection 2.8 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Subsections 4.4 and 4.8) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Subsection 2.8.

2.9 Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Subsection 11.1.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 9 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Subsection 11.7(b) 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*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Term 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; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro-rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, 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 Term Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Term Loans were made at a time when the conditions set forth in Subsection 6.2 were satisfied or waived, such payment shall be applied solely to pay the Term Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Term Loans of such Defaulting Lender until such time as all Term Loans are held by the Lenders pro-rata in accordance with the commitments hereunder.

(b) If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Term Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held on a pro-rata basis by the Lenders

in accordance with their pro rata share), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 3

[Reserved]

SECTION 4

General Provisions Applicable to Loans

4.1 Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Adjusted LIBOR Rate determined for such Interest Period plus the Applicable Margin in effect for such day; provided, one-third (⅓) of the Applicable Margin in effect for such day shall be payable in-kind ("PIK Interest"), which shall be capitalized on each Interest Payment Date by adding such amount to the Outstanding Amount of the Term Loans; provided, further, that the Borrower may, by providing written notice to the Administrative Agent three (3) Business Days prior to the applicable Interest Payment Date, elect to pay cash interest in lieu of all or any part of such PIK Interest.

(b) Each ABR Loan shall bear interest for each day that it is outstanding at a rate per annum equal to the Alternate Base Rate in effect for such day plus the Applicable Margin in effect for such day; provided, one-third (⅓) of the Applicable Margin in effect for such day shall be payable as PIK Interest, which shall be capitalized on each Interest Payment Date by adding such amount to the Outstanding Amount of the Term Loans; provided, further, that the Borrower may, by providing written notice to the Administrative Agent three (3) Business Days prior to the applicable Interest Payment Date, elect to pay cash interest in lieu of all or any part of such PIK Interest.

(c) Automatically upon the occurrence of and during the continuance of an Event of Default under Subsection 9.1(a) or (f), and after written notice to the Borrower from the Administrative Agent or the Required Lenders upon the occurrence of and during the continuance of any other Default or Event of Default, the principal of, and, to the extent permitted by law, interest on the Term Loans and any other amounts owing hereunder or under the other Loan Documents, shall bear interest for each day at a per annum rate which is equal to (x) in the case of principal, the rate that would otherwise be applicable thereto pursuant to the relevant foregoing provisions of this Subsection 4.1, plus 3.00% cash interest, (y) in the case of interest, the rate that would be otherwise applicable to principal of the related Term Loan pursuant to the relevant foregoing provisions of this Subsection 4.1 (other than clause (x) above) plus 3.00% cash interest and (z) in the case of other amounts due and owing or accruing, the rate

described in clause (b) of this Subsection 4.1 for ABR Loans accruing interest at the Alternate Base Rate plus 3.00%, in each case from the date of such nonpayment until such amount is paid in full (as well after as before judgment).

(d) Interest shall be payable in cash in arrears on each Interest Payment Date; provided, that (i) any PIK Interest shall capitalize on each Interest Payment Date (unless the Borrower elects to pay any or all of such PIK Interest in cash) and (ii) interest accruing pursuant to clause (c) of this Subsection 4.1 shall be payable from time to time on demand.

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

4.2 Conversion and Continuation Options. (a) Subject to its obligations pursuant to Subsection 4.12(c), the Borrower may elect from time to time to convert outstanding Loans of a given Tranche from Eurodollar Loans to ABR Loans by the Borrower giving the Administrative Agent irrevocable notice of such election prior to 11:00 A.M., New York City time three (3) Business Days prior to such election. The Borrower may elect from time to time to convert outstanding Loans of a given Tranche from ABR Loans to Eurodollar Loans, by the Borrower giving the Administrative Agent irrevocable notice of such election prior to 11:00 A.M., New York City time at least three Business Days prior to such election.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving the Administrative Agent irrevocable notice of such continuation prior to 11:00 A.M., New York City time three Business Days prior to such continuation, including the length of the next Interest Period to be applicable to such Eurodollar Loan, determined in accordance with the applicable provisions of the term "Interest Period" set forth in Subsection 1.1.

(c) If the Borrower wishes to request Eurodollar Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them.

(d) Each notice delivered by the Borrower pursuant to clause (a) or clause (b) above shall be in the form of a Committed Loan Notice specifying (i) whether the Borrower is

requesting a conversion of Loans from one Type to the other, or a continuation of Eurodollar Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) the Type of Loans to be borrowed or to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in such notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to ABR Loans. Any such automatic conversion to ABR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a conversion to, or continuation of Eurodollar Loans in any such notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(e) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its pro rata share, and if no timely notice of a borrowing, conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to ABR Loans described in Subsection 4.2(d). In the case of a Borrowing, each affected Lender shall make the amount of its Loan available to the Administrative Agent in immediately available funds at the Administrative Agent's Office not later than 1:00 p.m. on the Business Day specified in the applicable notice. Upon satisfaction of the applicable conditions set forth in Subsection 6.2 (and, if such Borrowing is the initial Extension of Credit, Subsection 6.1), the Administrative Agent shall make all funds so received available to the Borrower in like funds as received by the Administrative Agent by wire transfer of such funds in accordance with instructions provided to (and reasonably acceptable to) the Administrative Agent by the Borrower.

(f) Except as otherwise provided herein, a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan. During the existence of a Default, no Loans may be requested as, converted to or continued as Eurodollar Loans without the consent of the Required Lenders.

(g) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time that ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the prime rate used in determining the Alternate Base Rate promptly following such change.

4.3 Minimum Amounts; Maximum Sets. All Borrowings, conversions and continuations of Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Set shall be equal to $5,000,000 or a whole multiple of $1,000,000 in excess thereof and so that there shall not be more than five Sets at any one time outstanding.

4.4 Optional and Mandatory Prepayments. (a) Except as provided in the proviso hereto, the Loan Parties may not prepay all or any portion of the Outstanding Amount of

the Term Loans prior to [_____], 2017[4] (the "Non-Call Period"); provided, however, that any such prepayment by the Borrower of the Term Loans during the Non-Call Period (whether voluntarily or as a result of an acceleration of the Term Loan Facility Obligations or a mandatory prepayment event, including, for the avoidance of doubt, any prepayment pursuant to Subsection 4.4(c) herein) will be subject to a make-whole premium in an amount equal to the present value (as calculated pursuant to the terms herein and with a discount rate equal to the Treasury Rate plus 75 basis points) of the sum of (i) the Prepayment Premium that would be required to be paid if such prepayment were to be made on the first day after the end of the Non-Call Period, and (ii) the stream of interest payments that would have accrued between the actual prepayment date through and including the last day of the Non-Call Period if the prepaid principal had remained unpaid and outstanding until the end of the Non-Call Period. Any prepayment that occurs prior to the expiration of the Non-Call Period shall be accompanied by any accrued and unpaid interest on the Term Loans being repaid and amounts payable pursuant to Subsection 4.12.

(b) After the expiration of the Non-Call Period, the Borrower may at any time and from time to time prepay the Loans made to it, in whole or in part, subject to Subsection 4.12, without premium or penalty (except as provided below), upon notice by the Borrower to the Administrative Agent prior to 1:00 P.M., New York City time three Business Days prior to the date of prepayment (in the case of Eurodollar Loans), or prior to 1:00 P.M., New York City time at least one Business Day prior to the date of prepayment (in the case of ABR Loans). Such notice shall specify, in the case of any prepayment of Loans, the applicable Tranche being repaid, and if a combination thereof, the principal amount allocable to each, the date and amount of prepayment and whether the prepayment is of Eurodollar Loans or ABR Loans or a combination thereof, and, in each case if a combination thereof, the principal amount allocable to each. Any such notice may state that such notice is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities), in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Upon the receipt of any such notice the Administrative Agent shall promptly notify each affected Lender thereof. If any such notice is given and not revoked, the amount specified in such notice shall be due and payable on the date specified therein, together with (if a Eurodollar Loan is prepaid other than at the end of the Interest Period applicable thereto) any accrued and unpaid interest on the Loans being repaid and amounts payable pursuant to Subsection 4.12. Any voluntary prepayment of Eurodollar Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (B) any voluntary prepayment of ABR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding. Notwithstanding the foregoing, in the event that any Loan Party prepays any principal amounts under the Term Loans (whether voluntarily, as a result of an acceleration of the Term Loan Facility Obligations or a mandatory prepayment event, including, for the avoidance of doubt, any prepayment pursuant to Subsection 4.4(c) herein after the Non-Call Period, then the Loan Parties shall be required to pay the following premium with respect to such prepaid amount (as applicable, the "Prepayment Premium") based on the date of payment.

[4] NTD: To be the date that is two years following the Closing Date.

Date of Payment	Prepayment Premium
On or after the 2nd Anniversary of the Closing Date to (but excluding) the 3rd Anniversary of the Closing Date	7.50%
On or after the 3rd Anniversary of the Closing Date to (but excluding) the 4th Anniversary of the Closing Date	3.75%
On or after the 4th Anniversary of the Closing Date	0%

(c) (i) The Borrower shall, in accordance with Subsection 4.4(d), prepay the Term Loans to the extent required by Subsection 8.4(b), (ii) if on or after the Closing Date, the Borrower or any of its Restricted Subsidiaries shall Incur Indebtedness for borrowed money (excluding Indebtedness permitted pursuant to Subsection 8.1), the Borrower shall, in accordance with Subsection 4.4(d), prepay the Loans in an amount equal to 100.0% of the Net Cash Proceeds thereof minus the portion of such Net Cash Proceeds applied (to the extent Borrower or any of its Subsidiaries is required by the terms thereof) to prepay, repay or purchase other Indebtedness that is pari passu with the Term Loan Facility Obligations on a pro rata basis with the Loans, in each case with such prepayment to be made on or before the fifth Business Day following notice given to each Lender of the Prepayment Date, as contemplated by Subsection 4.4(e), (iii) subject to the last sentence of this Subsection 4.4(c), the Borrower shall, in accordance with Subsection 4.4(d), prepay the Loans within 120 days following the last day of the immediately preceding Fiscal Year (commencing with the Fiscal Year ending on or about December 31, 2016) (each, an "ECF Payment Date"), in an amount equal to (A)(1) 75.0% (as may be adjusted pursuant to the last proviso of this clause (iii)) of the Borrower's Excess Cash Flow for such Fiscal Year minus (2) the sum of (w) the aggregate principal amount of Term Loans (including Incremental Term Loans) during such Fiscal Year (which, in any event, shall not include any designated prepayment pursuant to clause (x) below), (x) the aggregate principal amount of Term Loans (including Incremental Term Loans) during the period beginning with the day following the last day of such Fiscal Year and ending on the ECF Payment Date and stated by the Borrower as prepaid pursuant to this Subsection 4.4(c)(iii) (provided that no prepayments subtracted pursuant to this clause (x) from any prior required prepayment pursuant to this Subsection 4.4(c)(iii) and no prepayments made pursuant to the other clauses of this Subsection 4.4(c) shall be so designated), (y) any ABL Indebtedness prepaid to the extent accompanied by a corresponding permanent commitment reduction under the ABL Facility during such Fiscal Year (which, in any event, shall not include any designated prepayment pursuant to clause (z) below),

and (z) the aggregate principal amount of ABL Indebtedness prepaid to the extent accompanied by a corresponding permanent commitment reduction under the ABL Facility during the period beginning with the day following the last day of such Fiscal Year and ending on the ECF Payment Date and stated by the Borrower as prepaid pursuant to this Subsection 4.4(c)(iii) (provided that no prepayments subtracted pursuant to this clause (x) from any prior required prepayment pursuant to this Subsection 4.4(c)(iii) and no prepayments made pursuant to the other clauses of this Subsection 4.4(c) shall be so designated), in each case, excluding prepayments funded with proceeds from the Incurrence of long-term Indebtedness (including a revolving credit facility) (the amount described in this clause (A), the "ECF Prepayment Amount") minus (B) the portion of such ECF Prepayment Amount applied (to the extent Borrower or any of its Subsidiaries is required by the terms thereof) to prepay, repay or purchase other Indebtedness that is pari passu with the Term Loan Facility Obligations on a pro rata basis with the Term Loans; provided that such percentage in clause (1) above shall be reduced to (x) for any Fiscal Year, 50% if the Consolidated Total Leverage Ratio as of the last day of the immediately preceding Fiscal Year was less than [_____] and equal to or greater than [_____] and (y)(1) 25% if the Consolidated Total Leverage Ratio as of the last day of the immediately preceding Fiscal Year was less than [_____]and equal to or greater than [_____] and (2) 0% if the Consolidated Total Leverage Ratio as of the last day of the immediately preceding Fiscal Year was less than [_____], and (iv) at any time an Event of Default has occurred and is continuing, within five (5) Business Days of the date of receipt by a Loan Party or its Subsidiaries of any Extraordinary Receipts in respect of Term Priority Collateral (or, if the extensions of credit under the ABL Credit Agreement have been paid in full and the commitments thereunder have been terminated, in respect of all Collateral), the Borrower shall, in accordance with Subsection 4.4(d), prepay the Loans in an amount equal to 100.0% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts and Taxes paid or payable in connection with such Extraordinary Receipts. Nothing in this Subsection 4.4(c) shall limit the rights of the Agents and the Lenders set forth in Section 9. Notwithstanding the provisions of clause (iii) of the previous sentence, any prepayment required pursuant to such clause (iii) shall be reduced by the amount necessary, if any, so that Total Liquidity is not less than $20,000,000 in excess of the amount required to be maintained by the Borrower in order to not trigger the "Excess Availability Trigger Date" pursuant to the definition thereof in the ABL Credit Agreement (as such definition exists as of the Closing Date) after giving effect to any such prepayment or if Total Liquidity is less than $20,000,000 in excess of the amount required to be maintained by the Borrower in order to not trigger the "Excess Availability Trigger Date" pursuant to the definition thereof in the ABL Credit Agreement (as such definition exists as of the Closing Date) immediately prior to the date on which such prepayment would otherwise have been required to be made, no such prepayment shall be required. Any prepayment pursuant to this Subsection 4.4(c) shall be accompanied by any accrued and unpaid interest on the Term Loans being repaid and amounts payable pursuant to Subsection 4.12.

(d) Subject to the penultimate sentence of Subsection 4.4(e), each prepayment of Term Loans pursuant to Subsection 4.4(c) shall be allocated pro rata among the Initial Term Loans, the Incremental Term Loans and the Extended Term Loans. Each prepayment of Term Loans pursuant to Subsections 4.4(a), (b) and (c) shall be applied within each Tranche of Term Loans to the principal thereof.

(e) The Borrower shall give notice to the Administrative Agent of any mandatory prepayment of the Loans (x) pursuant to Subsection 4.4(c)(iii), three (3) Business Days prior to the date on which such payment is due and (y) pursuant to Subsection 4.4(c)(i), (ii) or (iv), promptly (and in any event within five Business Days) upon becoming obligated to make such prepayment. Such notice shall state that the Borrower is offering to make or will make such mandatory prepayment (i) in the case of mandatory prepayments pursuant to Subsection 4.4(c)(i), on or before the date specified in Subsection 8.4(b) and (ii) in the case of mandatory prepayments pursuant to Subsection 4.4(c)(ii), (iii) or (iv) on or before the date specified in Subsection 4.4(c)(ii), (iii) or (iv), as the case may be (each, a "Prepayment Date"). Once given, such notice shall be irrevocable and all amounts subject to such notice shall be due and payable on the Prepayment Date (except as otherwise provided in the penultimate sentence of this Subsection 4.4(e)). Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall promptly give notice to each Lender of the prepayment and the Prepayment Date. The Borrower (in its sole discretion) may give each Lender the option (in its sole discretion) to elect to decline any such prepayment by giving notice of such election in writing to the Administrative Agent by 11:00 A.M., New York City time, on the date that is three (3) Business Days prior to the Prepayment Date. Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall immediately notify the Borrower of such election. Any amount so declined by any Lender may, at the option of the Borrower, be applied to the payment or prepayment of Indebtedness, including any Junior Debt, or otherwise be retained by the Borrower and its Restricted Subsidiaries and/or applied by the Borrower or any of its Restricted Subsidiaries in any manner not inconsistent with this Agreement. If, notwithstanding the fact that a Lender has declined a prepayment in accordance with the foregoing, the Borrower nevertheless sends such declined prepayment to the Administrative Agent, the Administrative Agent shall return such declined prepayment to the Borrower by wire transfer of such funds in accordance with instructions provided to the Administrative Agent by the Borrower.

(f) Amounts prepaid on account of Term Loans pursuant to Subsection 4.4(a), (b) or (c) may not be reborrowed.

(g) Notwithstanding the foregoing provisions of this Subsection 4.4, if at any time any prepayment of the Loans pursuant to Subsection 4.4(a), (b) or (c) would result, after giving effect to the procedures set forth in this Agreement, in the Borrower incurring breakage costs under Subsection 4.12 as a result of Eurodollar Loans being prepaid other than on the last day of an Interest Period with respect thereto, then, the Borrower may, so long as no Default or Event of Default shall have occurred and be continuing, in its sole discretion, initially (i) deposit a portion (up to 100.0%) of the amounts that otherwise would have been paid in respect of such Eurodollar Loans with the Administrative Agent (which deposit must be equal in amount to the amount of such Eurodollar Loans not immediately prepaid), to be held as security for the obligations of the Borrower to make such prepayment pursuant to a cash collateral agreement to be entered into on terms reasonably satisfactory to the Administrative Agent with such cash collateral to be directly applied upon the first occurrence thereafter of the last day of an Interest Period with respect to such Eurodollar Loans (or such earlier date or dates as shall be requested by the Borrower) or (ii) make a prepayment of the Loans in accordance with Subsection 4.4(b) with an amount equal to a portion (up to 100.0%) of the amounts that otherwise would have been paid in respect of such Eurodollar Loans (which prepayment, together with any deposits pursuant to clause (i) above, must be equal in amount to the amount of such Eurodollar Loans not

immediately prepaid); provided that, in the case of either clause (i) or (ii) above, such unpaid Eurodollar Loans shall continue to bear interest in accordance with Subsection 4.1 until such unpaid Eurodollar Loans or the related portion of such Eurodollar Loans, as the case may be, have or has been prepaid. In addition, if the Borrower reasonably determines in good faith that any amounts attributable to Foreign Subsidiaries that are required to be applied to prepay Loans pursuant to Subsection 4.4(b) would result in a Tax liability of the Borrower or any of its Restricted Subsidiaries, then the Borrower shall prepay the Loans in accordance with Subsection 4.4(c) net of such Tax liability.

(h) Notwithstanding anything to the contrary herein, this Subsection 4.4 may be amended (and the Lenders hereby irrevocably authorize the Administrative Agent to enter into any such amendments) to the extent necessary to reflect differing amounts payable, and priorities of payments, to Lenders participating in any new classes or tranches of Loans added pursuant to Subsections 2.6 and 2.8, as applicable, or pursuant to any other credit facility added pursuant to Subsection 2.6.

(i) [Reserved].

4.5 Administrative Agent's Fee. The Borrower agrees to pay to the Administrative Agent the fees set forth in the Administrative Agency Fee Letter.

4.6 Computation of Interest and Fees. (a) Interest (other than interest based on the Base Rate) shall be calculated on the basis of a 360-day year for the actual days elapsed; and interest based on the Base Rate shall be calculated on the basis of a 365 day year (or 366-day year, as the case may be) for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the affected Lenders of each determination of an Adjusted LIBOR Rate. Any change in the interest rate on a Term Loan resulting from a change in the Alternate Base Rate or the Eurodollar Reserve Percentage shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the affected Lenders of the effective date and the amount of each such change in interest rate. Interest shall accrue on each Term Loan for the day on which the Term Loan is made, and shall not accrue on any Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid, provided that any Term Loan that is repaid on the same day on which it is made shall, subject to Subsection 4.8(a), bear interest for one day.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding for all purposes, absent manifest error. The Administrative Agent shall, at the request of the Borrower or any Lender, deliver to the Borrower or such Lender a statement showing in reasonable detail the calculations used by the Administrative Agent in determining any interest rate pursuant to Subsection 4.1, excluding any LIBOR Rate which is based upon the Reuters Monitor Money Rates Service page and any ABR Loan which is based upon the Alternate Base Rate.

4.7 Inability to Determine Interest Rate. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Loan or a conversion to or continuation thereof that (i) Dollar deposits are not being offered to banks in the London

interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, (ii) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to any Eurodollar Loan or (iii) the LIBOR Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will so notify the Borrower and each Lender as soon as practicable thereafter. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans in the amount specified therein.

4.8 Pro Rata Treatment and Payments. (a) Except as expressly otherwise provided herein, each payment (including each prepayment, but excluding payments made pursuant to Subsection 2.8, 4.9, 4.10, 4.11, 4.12, 4.13(d), 11.1(g) or 11.6) by the Borrower on account of principal of and interest on any Term Loans of a given Tranche (other than any payments pursuant to Subsection 4.4(c) to the extent declined by any Lender in accordance with Subsection 4.4(e)) shall be allocated by the Administrative Agent pro rata according to the respective outstanding principal amounts of such Term Loans then held by the respective Lenders. All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made on or prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 P.M., New York City time), on the due date thereof to the Administrative Agent for the account of the Lenders holding the relevant Term Loans, the Lenders or the Administrative Agent, as the case may be, at the Administrative Agent's Office in Dollars in immediately available funds. Payments received by the Administrative Agent after such time may be deemed to have been received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Administrative Agent shall promptly distribute such payments to such Lenders if any such payment is received prior to 2:00 P.M., New York City time, on a Business Day, in like funds as received prior to the end of such Business Day and otherwise the Administrative Agent shall distribute such payment to such Lenders on the next succeeding Business Day. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day (and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension) unless the result of such extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. This Subsection 4.8(a) may be amended in accordance with Subsection 11.1(d) to the extent necessary to reflect

differing amounts payable, and priorities of payments, to Lenders participating in any new Tranches added pursuant to Subsections 2.6 and 2.8, as applicable.

(b) Unless the Administrative Agent shall have been notified in writing by any Lender prior to a Borrowing that such Lender will not make the amount that would constitute its share of such Borrowing available to the Administrative Agent, the Administrative Agent may assume that such Lender is making such amount available to the Administrative Agent, and the Administrative Agent may, in reliance upon such assumption, make available to the Borrower in respect of such Borrowing a corresponding amount. If such amount is not made available to the Administrative Agent by the required time on the Borrowing Date therefor, then such Lender and the Borrower severally agree to pay to the Administrative Agent forthwith on demand, such corresponding amount in immediately available funds with interest thereon, for each day and including the date such amount is made available to the Borrower to but excluding the date of payment to the Administrative Agent, at (A) in the case of payment to be made by such Lender, the greater of the Federal Funds Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation, plus any administrative, processing or similar fees customarily charged by the Administrative Agent in connection with the foregoing and (B) in the case of payment to be made by the Borrower, the interest rate applicable to ABR loans. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. A certificate of the Administrative Agent submitted to any Lender with respect to any amounts owing under this Subsection 4.8(b) shall be conclusive in the absence of manifest error. If the Borrower and such Lender shall pay such interest to the Administrative Agent for the same or an overlapping period, the Administrative Agent shall promptly remit to the Borrower the amount of such interest paid by the Borrower for such period. If such Lender pays its share of the applicable Borrowing to the Administrative Agent, then the amount so paid shall constitute such Lender's Loan included in such Borrowing. Any payment by the Borrower shall be without prejudice to any claim the Borrower may have against a Lender that shall have failed to make such payment to the Administrative Agent.

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Subsection 4.8(c) shall be conclusive, absent manifest error.

(d) If any Lender makes available to the Administrative Agent funds for any Loan to be made by such Lender as provided in the foregoing provisions of this Section 4, and

such funds are not made available to the Borrower by the Administrative Agent because the conditions to the applicable Extension of Credit set forth in Section 6 are not satisfied or waived in accordance with the terms hereof, the Administrative Agent shall return such funds (in like funds as received from such Lender) to such Lender without interest.

(e) The obligations of the Lenders hereunder to make Loans and to make payments pursuant to Subsection 10.7(a) are several and not joint. The failure of any Lender to make any Loan or to make any payment under Subsection 10.7(a) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its Loan or to make its payment under Subsection 10.7(a).

4.9 Illegality. If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to make, maintain or fund Loans whose interest is determined by reference to the Eurodollar Base Rate ("Affected Loans"), or to determine or charge interest rates based upon the Eurodollar Base Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Alternate Base Rate, the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Alternate Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Administrative Agent shall during the period of such suspension compute the Alternative Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

4.10 Requirements of Law. (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof applicable to any Lender, or compliance by any Lender with any request or directive (whether or not having the force of law)

from any central bank or other Governmental Authority, in each case made subsequent to the Closing Date (or, if later, the date on which such Lender becomes a Lender):

(i) shall subject such Lender to any Tax of any kind whatsoever with respect to any Eurodollar Loans made or maintained by it or its obligation to make or maintain Eurodollar Loans, or change the basis of taxation of payments to such Lender in respect thereof, in each case, except for Non-Excluded Taxes, Taxes imposed by FATCA and Taxes measured by or imposed upon net income, or franchise Taxes, or Taxes measured by or imposed upon overall capital or net worth, or branch Taxes (in the case of such capital, net worth or branch Taxes, imposed in lieu of such net income Tax), of such Lender or its applicable lending office, branch, or any affiliate thereof;

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender which is not otherwise included in the determination of the LIBOR Rate hereunder; or

(iii) shall impose on such Lender any other condition (excluding any Tax of any kind whatsoever);

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or to reduce any amount receivable hereunder in respect thereof, then, in any such case, upon notice to the Borrower from such Lender, through the Administrative Agent in accordance herewith, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced amount receivable with respect to such Eurodollar Loans; provided that, in any such case, the Borrower may elect to convert the Eurodollar Loans made by such Lender hereunder to ABR Loans by giving the Administrative Agent at least one Business Days' notice of such election, in which case the Borrower shall promptly pay to such Lender, upon demand, without duplication, amounts theretofore required to be paid to such Lender pursuant to this Subsection 4.10(a) and such amounts, if any, as may be required pursuant to Subsection 4.12. If any Lender becomes entitled to claim any additional amounts pursuant to this Subsection 4.10(a), it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in this clause (a) has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event and (z) as to the additional amount demanded by such Lender and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any additional amounts payable pursuant to this Subsection 4.10(a) submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling

such Lender with any request or directive regarding capital adequacy or liquidity requirements (whether or not having the force of law) from any Governmental Authority, in each case, made subsequent to the Closing Date, does or shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, within ten Business Days after submission by such Lender to the Borrower (through the Administrative Agent) of a written request therefor certifying (x) that one of the events described in this clause (b) has occurred and describing in reasonable detail the nature of such event, (y) as to the reduction of the rate of return on capital resulting from such event and (z) as to the additional amount or amounts demanded by such Lender or corporation and a reasonably detailed explanation of the calculation thereof, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or corporation for such reduction. Such a certificate as to any additional amounts payable pursuant to this Subsection 4.10(b) submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

(c) Notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, regulations, guidelines and directives promulgated thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, in each case, shall be deemed to have been enacted, adopted, promulgated or issued, as applicable, subsequent to the Closing Date for all purposes herein.

4.11 Taxes. (a) Except as provided below in this Subsection 4.11 or as required by law, all payments made by the Borrower or the Agents under this Agreement and any Notes shall be made free and clear of, and without deduction or withholding for or on account of any Taxes; provided that if any Non-Excluded Taxes are required to be withheld from any amounts payable by the Borrower to any Agent or any Lender hereunder or under any Notes, the amounts so payable by the Borrower shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that the Borrower shall be entitled to deduct and withhold, and the Borrower shall not be required to indemnify for any Non-Excluded Taxes, and any such amounts payable by the Borrower to or for the account of any Agent or Lender, shall not be increased (x) if such Agent or Lender fails to comply with the requirements of clause (b) (including for the avoidance of doubt any such failure to comply with the requirements of clause (b) as a result of a Lender not being legally entitled to so comply), (c) or (d) of this Subsection 4.11 or with the requirements of Subsection 4.13, or (y) with respect to any Non-Excluded Taxes imposed in connection with the payment of any fees paid under this Agreement unless such Non-Excluded Taxes are imposed as a result of a Change in Law, or (z) with respect to any Non-Excluded Taxes imposed by the United States or any state or political subdivision thereof, unless such Non-Excluded Taxes are

imposed as a result of a change in treaty, law or regulation that occurred after such Agent became an Agent hereunder or such Lender became a Lender hereunder (or, if such Agent or Lender is a non-U.S. intermediary or flow-through entity for U.S. federal income tax purposes, after the relevant beneficiary or member of such Agent or Lender became such a beneficiary or member, if later) (any such change, at such time, a "Change in Law"). Whenever any Non-Excluded Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for its own account or for the account of the respective Lender or Agent, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes when due to the appropriate Governmental Authority in accordance with applicable law or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Administrative Agent, the Lenders and the Agents for any incremental Taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure. The agreements in this Subsection 4.11 shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

(b) Each Agent and each Lender that is not a United States Person shall:

(i) (1) on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Agent or Lender, deliver to the Borrower and the Administrative Agent (A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (certifying that it is a resident of the applicable country within the meaning of the income tax treaty between the United States and that country) or Form W-8ECI, or successor applicable form, as the case may be, in each case certifying that it is entitled to receive all payments under this Agreement and any Notes without deduction or withholding of any United States federal income taxes, and (B) such other forms, documentation or certifications, as the case may be, certifying that it is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes;

(2) deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of any such form or certification provided in Subsection 4.11(b)(i)(1) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form or certificate previously delivered by it to the Borrower;

(3) [reserved]; and

(4) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (4) such Lender shall be entitled to consider the cost (to the extent unreimbursed by any Loan

Party) which would be imposed on such Lender of complying with such request; or

(ii) in the case of any such Lender that is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code and is claiming the so-called "portfolio interest exemption",

(1) [reserved];

(2) deliver to the Borrower on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Lender, with a copy to the Administrative Agent, (A) two certificates (any such certificate a "U.S. Tax Compliance Certificate") substantially in the form of Exhibit D-1 hereto to the effect that it is not (i) a bank within the meaning of Section 881(c)(3)(A) of the Code, (ii) a "10 percent shareholder" of the Borrower or any Parent Entity within the meaning of Section 881(c)(3)(B) of the Code or (iii) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (B) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or successor applicable form and (C) such other forms, documentation or certifications, as the case may be certifying that it is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes (and shall also deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of such form or certificate on or before the date it expires or becomes obsolete and after the occurrence of any event requiring a change in the most recently provided form or certificate; and

(3) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (3) such Lender shall be entitled to consider the cost (to the extent unreimbursed by the Borrower) which would be imposed on such Lender of complying with such request; or

(iii) in the case of any such Agent or Lender that is a non-U.S. intermediary or flow-through entity for U.S. federal income tax purposes,

(1) on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Agent or Lender, deliver to the Borrower and the Administrative Agent two accurate and complete original signed copies of Internal Revenue Service Form W-8IMY and, if such Lender is treated as a partnership for U.S. federal income tax purposes and if any direct or indirect partner of such Lender is claiming the so-called "portfolio interest exemption", represent to the Borrower and the Administrative Agent that such Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code; and

(A) if applicable, with respect to each beneficial owner or partner of such Agent or Lender that is not claiming the so-called "portfolio interest exemption", also deliver to the Borrower and the Administrative Agent (I) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (certifying that such beneficial owner or partner is a resident of the applicable country within the meaning of the income tax treaty between the United States and that country), Form W-8ECI or Form W-9, or successor applicable form, as the case may be, in each case so that each such beneficial owner or partner is entitled to receive all payments under this Agreement and any Notes without deduction or withholding of any United States federal income taxes and (II) such other forms, documentation or certifications, as the case may be, certifying that each such beneficial owner or partner is entitled to an exemption from United States backup withholding tax with respect to all payments under this Agreement and any Notes; and

(B) if applicable, with respect to each beneficial owner or partner of such Lender that is claiming the so-called "portfolio interest exemption", (I) deliver to the Borrower and the Administrative Agent two U.S. Tax Compliance Certificates substantially in the form of Exhibit D-2 from each beneficial owner or partner to the effect that such beneficial owner or partner is not (1) a bank within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower or any Parent Entity within the meaning of Section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or successor applicable form, from each such beneficial owner or partner, provided that if such Agent or Lender is a partnership, such Agent or Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-3 on behalf of each such direct and indirect partner, and (II) also deliver to Borrower and the Administrative Agent such other forms, documentation or certifications, as the case may be, certifying that each such beneficial owner or partner is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes;

(2) deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of any such forms, certificates or certifications referred to above on or before the date any such form, certificate or certification expires or becomes obsolete, or any beneficial owner or partner changes, and after the occurrence of any event requiring a change in the most recently provided form, certificate or certification; and

(3) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal

entitlement of such beneficial owner or partner to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (3) such Agent or Lender shall be entitled to consider the cost (to the extent unreimbursed by the Borrower) which would be imposed on such Agent or Lender (or beneficial owner or partner) of complying with such request;

unless in any such case there has been a Change in Law which renders all such forms inapplicable or which would prevent such Agent or such Lender (or such beneficial owner or partner) from duly completing and delivering any such form with respect to it and such Agent or such Lender so advises the Borrower and the Administrative Agent.

(c) Each Lender and each Agent, in each case that is a United States Person shall on or before the date of any payment by the Borrower under this Agreement or any Notes to such Lender or Agent, deliver to the Borrower and the Administrative Agent two duly completed copies of Internal Revenue Service Form W-9, or successor form, certifying that such Lender or Agent is a United States Person and that such Lender or Agent is entitled to complete exemption from United States backup withholding tax.

(d) Notwithstanding the foregoing, if the Administrative Agent is not a United States Person, on or before the date of any payment by the Borrower under this Agreement or any Notes to the Administrative Agent, the Administrative Agent shall:

(i) deliver to the Borrower (A) two duly completed copies of Internal Revenue Service Form W-8ECI, or successor applicable form, with respect to any amounts payable to the Administrative Agent for its own account, (B) two duly completed copies of Internal Revenue Service Form W-8IMY, or successor applicable form, with respect to any amounts payable to the Administrative Agent for the account of others, certifying that it is a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. person with respect to such payments as contemplated by U.S. Treasury Regulation § 1.1441-1(b)(2)(iv)) or (C) such other forms or certifications as may be sufficient under applicable law to establish that the Administrative Agent is entitled to receive any payment by the Borrower under this Agreement or any Notes (whether for its own account or for the account of others) without deduction or withholding of any United States federal income taxes; and

(ii) deliver, to the extent legally entitled to do so, to the Borrower two further copies of any such form or certification provided in Subsection 4.11(d)(i) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form or certificate previously delivered by it to the Borrower.

(e) If a payment made to a Lender under any 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, such Lender shall deliver to the Administrative Agent and the Borrower, at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Agent or the Borrower, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Administrative Agent or the Borrower as may be necessary for the Administrative Agent and the Borrower to comply with their respective obligations (including any applicable reporting requirements) under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Subsection 4.11(e), FATCA shall include any amendments made to FATCA after the date of this Agreement. For the avoidance of doubt, the Borrower and the Administrative Agent shall be permitted to withhold any Taxes imposed by FATCA.

4.12 Indemnity. The Borrower agrees to indemnify each Lender in respect of Extensions of Credit made, or requested to be made, to the Borrower, and to hold each such Lender harmless from any loss or expense which such Lender may sustain or incur (other than through such Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable decision) as a consequence of (a) default by the Borrower in making a Borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment or conversion of Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of a payment or prepayment of Eurodollar Loans or the continuation or conversion of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto, (d) the revocation of a redemption notice in respect of Eurodollar Loans delivered by the Borrower in accordance with the provisions of Subsection 4.4(b) or (e) any assignment of a Eurodollar Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Subsections 2.8(e), 4.13(d) and 11.1(g). Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or converted, or not so borrowed, converted or continued, for the period from the date of such prepayment or conversion or of such failure to borrow, convert or continue to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market plus (iii) any fees payable to terminate such deposits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. If any Lender becomes entitled to claim any amounts under the indemnity contained in this Subsection 4.12, it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in clauses (a), (b), (c), (d) or (e) above has occurred and describing in reasonable detail the nature of such event, (y) as to the loss or expense sustained or incurred by such Lender as a consequence thereof and (z) as to the amount for which such Lender seeks indemnification hereunder and a reasonably detailed explanation of the calculation thereof. Such

a certificate as to any indemnification pursuant to this Subsection 4.12 submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within five Business Days after receipt thereof. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

4.13 Certain Rules Relating to the Payment of Additional Amounts. (a) Upon the request, and at the expense of the Borrower, each Lender and Agent to which the Borrower is required to pay any additional amount pursuant to Subsection 4.10 or 4.11, and any Participant in respect of whose participation such payment is required, shall reasonably afford the Borrower the opportunity to contest, and reasonably cooperate with the Borrower in contesting, the imposition of any Non-Excluded Tax giving rise to such payment; provided that (i) such Lender or Agent shall not be required to afford the Borrower the opportunity to so contest unless the Borrower shall have confirmed in writing to such Lender or Agent its obligation to pay such amounts pursuant to this Agreement and (ii) the Borrower shall reimburse such Lender or Agent for its reasonable attorneys' and accountants' fees and disbursements incurred in so cooperating with the Borrower in contesting the imposition of such Non-Excluded Tax; provided, however, that notwithstanding the foregoing no Lender or Agent shall be required to afford the Borrower the opportunity to contest, or cooperate with the Borrower in contesting, the imposition of any Non-Excluded Taxes, if such Lender or Agent in its sole discretion in good faith determines that to do so would have an adverse effect on it.

(b) If a Lender changes its applicable lending office (other than (i) pursuant to clause (c) below or (ii) after an Event of Default under Subsection 9.1(a) or (f) has occurred and is continuing) and the effect of such change, as of the date of such change, would be to cause the Borrower to become obligated to pay any additional amount under Subsection 4.10 or 4.11, the Borrower shall not be obligated to pay such additional amount.

(c) If a condition or an event occurs which would, or would upon the passage of time or giving of notice, result in the payment of any additional amount to any Lender or Agent by the Borrower pursuant to Subsection 4.10 or 4.11 or result in Affected Loans or commitments to make Affected Loans being automatically converted to ABR Loans or commitments to make ABR Loans, as the case may be, pursuant to Subsection 4.9, such Lender or Agent shall promptly notify the Borrower and the Administrative Agent and shall take such steps as may reasonably be available to it to mitigate the effects of such condition or event (which shall include efforts to rebook the Term Loans held by such Lender at another lending office, or through another branch or an affiliate, of such Lender); provided that such Lender or Agent shall not be required to take any step that, in its reasonable judgment, would be materially disadvantageous to its business or operations or would require it to incur additional costs (unless the Borrower agrees to reimburse such Lender or Agent for the reasonable incremental out-of-pocket costs thereof).

(d) If the Borrower shall become obligated to pay additional amounts pursuant to Subsection 4.10 or 4.11 and any affected Lender shall not have promptly taken steps necessary to avoid the need for payments under Subsection 4.10 or 4.11 or if Affected Loans or commitments to make Affected Loans are automatically converted to ABR Loans or commitments to make ABR Loans, as the case may be, under Subsection 4.9 and any affected

Lender shall not have promptly taken steps necessary to avoid the need for such conversion under Subsection 4.9, the Borrower shall have the right, for so long as such obligation remains, (i) with the assistance of the Administrative Agent to seek one or more substitute Lenders reasonably satisfactory to the Administrative Agent and the Borrower to purchase the affected Term Loan, in whole or in part, at an aggregate price no less than such Term Loan's principal amount plus accrued interest, and assume the affected obligations under this Agreement, or (ii) so long as no Event of Default under Subsection 9.1(a) or (f) then exists or will exist immediately after giving effect to the respective prepayment, upon notice to the Administrative Agent to prepay the affected Term Loan, in whole or in part, subject to Subsection 4.12, without premium or penalty. In the case of the substitution of a Lender, then, the Borrower, the Administrative Agent, the affected Lender, and any substitute Lender shall execute and deliver an appropriately completed Assignment and Acceptance pursuant to Subsection 11.6(b) to effect the assignment of rights to, and the assumption of obligations by, the substitute Lender; provided that any fees required to be paid by Subsection 11.6(b) in connection with such assignment shall be paid by the Borrower or the substitute Lender. In the case of a prepayment of an affected Term Loan, the amount specified in the notice shall be due and payable on the date specified therein, together with any accrued interest to such date on the amount prepaid. In the case of each of the substitution of a Lender and of the prepayment of an affected Term Loan, the Borrower shall first pay the affected Lender any additional amounts owing under Subsections 4.10 and 4.11 (as well as any commitment fees and other amounts then due and owing to such Lender, including any amounts under this Subsection 4.13) prior to such substitution or prepayment. In the case of the substitution of a Lender pursuant to this Subsection 4.13(d), if the Lender being replaced does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the assignee Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (b) the date as of which all obligations of the Borrower owing to such replaced Lender relating to the Term Loans and participations so assigned shall be paid in full by the assignee Lender and/or the Borrower to such Lender being replaced, then the Lender being replaced shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Lender.

(e) If any Agent or any Lender receives a refund directly attributable to Taxes for which the Borrower has made additional payments pursuant to Subsection 4.10(a) or 4.11(a), such Agent or such Lender, as the case may be, shall promptly pay such refund (together with any interest with respect thereto received from the relevant taxing authority, but net of any reasonable cost incurred in connection therewith) to the Borrower; provided, however, that the Borrower agrees promptly to return such refund (together with any interest with respect thereto due to the relevant taxing authority) (free of all Non-Excluded Taxes) to such Agent or the applicable Lender, as the case may be, upon receipt of a notice that such refund is required to be repaid to the relevant taxing authority.

(f) The obligations of any Agent, Lender or Participant under this Subsection 4.13 shall survive the termination of this Agreement and the payment of the Term Loans and all amounts payable hereunder.

SECTION 5

Representations and Warranties

To induce the Administrative Agent and each Lender to make the Extensions of Credit requested to be made by it on the Closing Date and on each Borrowing Date thereafter, the Borrower with respect to itself and its Restricted Subsidiaries, hereby represents and warrants, on the Closing Date, in each case after giving effect to the Transactions, and on every Borrowing Date thereafter to the Administrative Agent and each Lender that:

5.1 Financial Condition. (a) (i) The audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2013 and the related consolidated statements of operations, equity and cash flows for the Fiscal Year ended December 31, 2013, reported on by and accompanied by unqualified reports from KPMG LLP, and (ii) the unaudited consolidated balance sheets of the Borrower and its Subsidiaries and the related consolidated statements of operations, equity and cash flows for the fiscal quarter ended June 30, 2015 present fairly, in all material respects, the consolidated financial condition as at such dates, and the consolidated statements of operations and consolidated cash flows for the respective periods then ended, of the Borrower and its Subsidiaries. All such financial statements, including the related schedules and notes thereto, have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby (except as approved by a Responsible Officer, and disclosed in any such schedules and notes). During the period from December 31, 2013 to and including the Closing Date, there has been no sale, transfer or other disposition by the Borrower and its Subsidiaries of any material part of its business or property and no purchase or other acquisition by the Borrower and its Subsidiaries of any business or property (including any Capital Stock of any other Person) which in either case is material in relation to the consolidated financial condition of the Borrower and its Subsidiaries, taken as a whole, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.

(b) As of the Closing Date, except as set forth in the financial statements referred to in Subsection 5.1(a), there are no liabilities of any Loan Party of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which would reasonably be expected to result in a Material Adverse Effect.

(c) After giving effect to (i) the Transactions and (ii) the payment and accrual of all transaction costs in connection with the foregoing, the Borrower, together with its Subsidiaries on a consolidated basis, is Solvent.

5.2 No Change; Solvent. Since the Plan Effective Date, there has been no development or event relating to or affecting any Loan Party which has had or would be reasonably expected to have a Material Adverse Effect (after giving effect to (i) the consummation of the Transactions, (ii) the making of the Extensions of Credit to be made on the Closing Date and the application of the proceeds thereof as contemplated hereby and (iii) the payment of actual or estimated fees, expenses, financing costs and tax payments related to the Transactions contemplated hereby. Since the Confirmation Date, except as otherwise permitted under this Agreement, no dividends or other distributions have been declared, paid or made upon

the Capital Stock of the Borrower, nor has any of the Capital Stock of the Borrower been redeemed, retired, purchased or otherwise acquired for value by the Borrower or any of its Subsidiaries. As of the Plan Effective Date, after giving effect to the consummation of the Transactions to be consummated on the Closing Date, the Borrower, together with its Subsidiaries on a consolidated basis, is Solvent.

5.3 Corporate Existence; Compliance with Law. Each of the Loan Parties (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the legal right to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, except to the extent that the failure to have such legal right would not be reasonably expected to have a Material Adverse Effect, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, other than in such jurisdictions where the failure to be so qualified and in good standing would not be reasonably expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law, except to the extent that the failure to comply therewith would not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

5.4 Corporate Power; Authorization; Enforceable Obligations. Each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain Extensions of Credit hereunder, and each such Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the Extensions of Credit to it, if any, on the terms and conditions of this Agreement and any Notes. No consent or authorization of, filing with, notice to or other similar act by or in respect of, any Governmental Authority or any other Person is required to be obtained or made by or on behalf of any Loan Party in connection with the execution, delivery, performance, validity or enforceability of the Loan Documents to which it is a party or, in the case of the Borrower, with the Extensions of Credit to it, if any, hereunder, except for (a) consents, authorizations, notices and filings that have been obtained or made prior to the Closing Date, (b) filings to perfect the Liens created by the Security Documents, and (c) consents, authorizations, notices and filings which the failure to obtain or make would not reasonably be expected to have a Material Adverse Effect. This Agreement has been duly executed and delivered by the Borrower, and each other Loan Document to which any Loan Party is a party will be duly executed and delivered on behalf of such Loan Party. This Agreement constitutes a legal, valid and binding obligation of the Borrower and each other Loan Document to which any Loan Party is a party when executed and delivered will constitute a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, in each case except as enforceability may be limited by applicable domestic or foreign bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.5 No Legal Bar. The execution, delivery and performance of the Loan Documents by any of the Loan Parties, the Extensions of Credit hereunder and the use of the proceeds thereof (a) will not violate any Requirement of Law or Contractual Obligation of such

Loan Party in any respect that would reasonably be expected to have a Material Adverse Effect, (b) will not result in, or require the creation or imposition of any Lien (other than Liens securing the Term Loan Facility Obligations or otherwise permitted hereby) on any of its properties or revenues pursuant to any such Requirement of Law or Contractual Obligation and (c) will not violate any provision of the Organizational Documents of such Loan Party or any of the Restricted Subsidiaries in any respect.

5.6 No Material Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Borrower or any of its Restricted Subsidiaries or against any of their respective properties or revenues, (a) except as described on Schedule 5.6, which is so pending or threatened at any time on or prior to the Closing Date and relates to any of the Loan Documents or any of the transactions contemplated hereby or thereby or (b) which would be reasonably expected to have a Material Adverse Effect.

5.7 No Default. Neither the Borrower nor any of its Restricted Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect which would be reasonably expected to have a Material Adverse Effect. Since the Closing Date, no Default or Event of Default has occurred and is continuing.

5.8 Ownership of Property; Liens. Each of the Borrower and its Restricted Subsidiaries has good title in fee simple to, or a valid leasehold interest in, all its material real property, and good title to, or a valid leasehold interest in, all its other material property, except those for which the failure to have such good title or such leasehold interest would not be reasonably expected to have a Material Adverse Effect, and none of such real or other property is subject to any Lien, except for Permitted Liens. Schedule 5.8 sets forth all Mortgaged Fee Properties as of the Closing Date.

5.9 Intellectual Property. The Borrower and each of its Restricted Subsidiaries owns, or has the legal right to use, all United States and foreign patents, patent applications, trademarks, trademark applications, trade names, copyrights, technology, know-how and processes necessary for each of them to conduct its business as currently conducted (the "Intellectual Property") except for those the failure to own or have such legal right to use would not be reasonably expected to have a Material Adverse Effect. Except as provided on Schedule 5.9, no claim has been asserted and is pending by any Person against the Borrower or any of its Restricted Subsidiaries challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any such claim, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and its Restricted Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements which in the aggregate, would not be reasonably expected to have a Material Adverse Effect.

5.10 Taxes. (1) Each of the Borrower and its Restricted Subsidiaries has filed or caused to be filed all material tax returns which are required to be filed by it and has paid (a) all Taxes shown to be due and payable on such returns and (b) all Taxes shown to be due and payable on any assessments of which it has received notice made against it or any of its property (including the Mortgaged Fee Properties) and all other Taxes imposed on it or any of its property

by any Governmental Authority; and (2) no Tax Liens have been filed (except for Liens for Taxes not yet due and payable), and no claim is being asserted in writing, with respect to any such Taxes (in each case other than in respect of any such (i) Taxes with respect to which the failure to pay, in the aggregate, would not have a Material Adverse Effect or (ii) Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings diligently conducted and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or its Restricted Subsidiaries, as the case may be).

5.11 Federal Regulations. No part of the proceeds of any Extensions of Credit will be used for any purpose which violates the provisions of the Regulations of the Board, including without limitation, Regulation T, Regulation U or Regulation X of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in conformity with the requirements of FR Form G-3 or FR Form U-1, referred to in said Regulation U.

5.12 ERISA. (a) During the five year period prior to each date as of which this representation is made, or deemed made, with respect to any Plan, none of the following events or conditions, either individually or in the aggregate, has resulted or is reasonably likely to result in a Material Adverse Effect: (i) a Reportable Event; (ii) a failure to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA); (iii) any noncompliance with the applicable provisions of ERISA or the Code; (iv) a termination of a Single Employer Plan (other than a standard termination pursuant to Section 4041(b) of ERISA); (v) a Lien on the property of the Borrower or its Restricted Subsidiaries in favor of the PBGC or a Plan; (vi) a complete or partial withdrawal from any Multiemployer Plan by the Borrower or any Commonly Controlled Entity; (vii) the Reorganization or Insolvency of any Multiemployer Plan; or (viii) any transactions that resulted or could reasonably be expected to result in any liability to the Borrower or any Commonly Controlled Entity under Section 4069 of ERISA or Section 4212(c) of ERISA.

(b) With respect to any Foreign Plan, none of the following events or conditions exists and is continuing that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect: (i) substantial non-compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders; (ii) failure to be maintained, where required, in good standing with applicable regulatory authorities; (iii) any obligation of the Borrower or its Restricted Subsidiaries in connection with the termination or partial termination of, or withdrawal from, any Foreign Plan; (iv) any Lien on the property of the Borrower or its Restricted Subsidiaries in favor of a Governmental Authority as a result of any action or inaction regarding a Foreign Plan; (v) for each Foreign Plan which is a funded or insured plan, failure to be funded or insured on an ongoing basis to the extent required by applicable non-U.S. law (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities); (vi) any facts that, to the best knowledge of the Borrower or any of its Restricted Subsidiaries, exist that would reasonably be expected to give rise to a dispute and any pending or threatened disputes that, to the best knowledge of the Borrower or any of its Restricted Subsidiaries, would reasonably be expected to result in a material liability to the Borrower or any of its Restricted Subsidiaries concerning the assets of any Foreign Plan (other than individual claims for the payment of benefits); and

(vii) failure to make all contributions in a timely manner to the extent required by applicable non-U.S. law.

5.13 Collateral. Upon execution and delivery thereof by the parties thereto, the Guarantee and Collateral Agreement and the Mortgages (if any) will be effective to create (to the extent described therein) in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable security interest in or liens on the Collateral described therein, except as to enforcement, as may be limited by applicable domestic or foreign bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. When (a) the actions specified in [Schedule 3] to the Guarantee and Collateral Agreement have been duly taken, (b) all applicable Instruments, Chattel Paper and Documents (each as described therein) a security interest in which is perfected by possession have been delivered to, and/or are in the continued possession of, the Collateral Agent (it being understood and agreed that any such Collateral that has been delivered to and/or is in the continued possession of the ABL Agent shall, pursuant to the ABL/Term Loan Intercreditor Agreement, be deemed delivered to and/or in the continued possession of the Collateral Agent for all purposes hereunder), (c) all Deposit Accounts and Pledged Stock (each as defined in the Guarantee and Collateral Agreement) a security interest in which is required to be or is perfected by "control" (as described in the Uniform Commercial Code as in effect in each applicable jurisdiction (in the case of Deposit Accounts) and the State of New York (in the case of Pledged Stock) from time to time) are under the "control" of the Collateral Agent or the Administrative Agent, as agent for the Collateral Agent and as directed by the Collateral Agent, and (d) the Mortgages (if any) have been duly recorded in the proper recorders' offices or appropriate public records and the mortgage recording fees and taxes in respect thereof, if any, are paid and compliance is otherwise had with the formal requirements of state or local law applicable to the recording of real property mortgages generally, the security interests and liens granted pursuant thereto shall constitute (to the extent described therein and with respect to the Mortgages, only as relates to the real property security interests and liens granted pursuant thereto) a perfected security interest in (to the extent intended to be created thereby and required to be perfected under the Loan Documents), all right, title and interest of each pledgor or mortgagor (as applicable) party thereto in the Collateral described therein (excluding Commercial Tort Claims, as defined in the Guarantee and Collateral Agreement, other than such Commercial Tort Claims set forth on Schedule 6 thereto (if any)) with respect to such pledgor or mortgagor (as applicable). Notwithstanding any other provision of this Agreement, capitalized terms that are used in this Subsection 5.13 and not defined in this Agreement are so used as defined in the applicable Security Document.

5.14 Investment Company Act; Other Regulations. The Borrower is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act. The Borrower is not subject to regulation under any federal or state statute or regulation (other than Regulation X of the Board) which limits its ability to incur Indebtedness as contemplated hereby.

5.15 Subsidiaries. Schedule 5.15 sets forth all the Subsidiaries of the Borrower at the Closing Date, the jurisdiction of their organization and the direct or indirect ownership interest of the Borrower therein.

5.16 Purpose of Loans. The proceeds of the Term Loans shall be used by the Borrower (i) to repay in full any outstanding obligations under that certain Debtor-In-Possession Credit Agreement, dated as of June 8, 2015, among the Borrower, the Administrative Agent, the Collateral Agent and the lenders party thereto, (ii) to fund certain payments required to be made by the Loan Parties under the Plan of Reorganization and (iii) for working capital and general corporate purposes of the Loan Parties. For the avoidance of doubt, once repaid, the Term Loans cannot be reborrowed.

5.17 Environmental Matters. Other than as disclosed on Schedule 5.17 or exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) The Borrower and its Restricted Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations or for any property owned, leased, or otherwise operated by any of them and reasonably expect to timely obtain without material expense all such Environmental Permits required for planned operations; (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; and (iv) believe they will be able to maintain compliance with Environmental Laws, including any reasonably foreseeable future requirements thereof.

(b) Materials of Environmental Concern have not been transported, disposed of, emitted, discharged, or otherwise released or threatened to be released, to or at any real property presently or formerly owned, leased or operated by the Borrower or any of its Restricted Subsidiaries or at any other location, which would reasonably be expected to (i) give rise to liability or other Environmental Costs of the Borrower or any of its Restricted Subsidiaries under any applicable Environmental Law, or (ii) interfere with the planned or continued operations of the Borrower and its Restricted Subsidiaries, or (iii) impair the fair saleable value of any real property owned by the Borrower or any of its Restricted Subsidiaries that is part of the Collateral.

(c) There is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under any Environmental Law to which the Borrower or any of its Restricted Subsidiaries is, or to the knowledge of the Borrower or any of its Restricted Subsidiaries is reasonably likely to be, named as a party that is pending or, to the knowledge of the Borrower or any of its Restricted Subsidiaries, threatened.

(d) Neither the Borrower nor any of its Restricted Subsidiaries has received any written request for information, or been notified that it is a potentially responsible party, under the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law, or received any other written request for information from any Governmental Authority with respect to any Materials of Environmental Concern.

(e) Neither the Borrower nor any of its Restricted Subsidiaries has entered into or agreed to any consent decree, order, or settlement or other agreement, nor is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum, relating to compliance with or liability under any Environmental Law.

5.18 No Material Misstatements. The written information reports, financial statements, exhibits and schedules furnished by or on behalf of the Borrower to the Administrative Agent and the Lenders on or prior to the Closing Date in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, taken as a whole, did not contain as of the Closing Date any material misstatement of fact and did not omit to state as of the Closing Date any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading in their presentation of the Borrower and its Restricted Subsidiaries taken as a whole. It is understood that (a) no representation or warranty is made concerning the forecasts, estimates, pro forma information, projections and statements as to anticipated future performance or conditions, and the assumptions on which they were based or concerning any information of a general economic nature or general information about Borrower's and its Subsidiaries' industry, contained in any such information, reports, financial statements, exhibits or schedules, except that, in the case of such forecasts, estimates, pro forma information, projections and statements, as of the date such forecasts, estimates, pro forma information, projections and statements were generated, (i) such forecasts, estimates, pro forma information, projections and statements were based on the good faith assumptions of the management of the Borrower and (ii) such assumptions were believed by such management to be reasonable and (b) such forecasts, estimates, pro forma information and statements, and the assumptions on which they were based, may or may not prove to be correct.

5.19 Labor Matters. There are no strikes pending or, to the knowledge of the Borrower, reasonably expected to be commenced against the Borrower or any of its Restricted Subsidiaries which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of the Borrower and each of its Restricted Subsidiaries have not been in violation of any applicable laws, rules or regulations, except where such violations would not reasonably be expected to have a Material Adverse Effect.

5.20 Insurance. Schedule 5.20 sets forth a complete and correct listing as of the Closing Date of all insurance that is (a) maintained by the Loan Parties and (b) material to the business and operations of the Borrower and its Restricted Subsidiaries taken as a whole, with the amounts insured (and any deductibles) set forth therein.

5.21 Sanctions; Anti-Corruption Laws. None of Loan Parties or any of their Subsidiaries or, to the knowledge of any Loan Party, any of their respective directors, officers, employees or agents, (a) is an individual or entity that is, or is owned or controlled by any individual or entity that is, (i) currently the subject or target of any Sanctions, (ii) a Sanctioned Person or (iii) located, organized or resident in a Sanctioned Country, (b) owns any of the Capital Stock of any Sanctioned Person, or (c) derives any of its operating income from investments in, or transactions with Sanctioned Persons, in each case, that would constitute a

violation of applicable Laws. The Loan Parties and their Subsidiaries have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar and applicable anti-corruption legislation or laws in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

SECTION 6

Conditions Precedent

6.1 Conditions to Initial Extension of Credit. This Agreement, including the agreement of each Lender to make the initial Extension of Credit requested to be made by it, shall become effective on the date on which the following conditions precedent shall have been satisfied or waived:

(a) Loan Documents. The Administrative Agent shall have received the following Loan Documents, executed and delivered as required below:

(i) this Agreement, executed and delivered by a duly authorized officer of the Borrower;

(ii) the Guarantee and Collateral Agreement, executed and delivered by a duly authorized officer of the Borrower and each Wholly Owned Subsidiary that is a Domestic Subsidiary (other than any Excluded Subsidiary) of the Borrower, and an Acknowledgement and Consent in the form attached to the Guarantee and Collateral Agreement, executed and delivered by each Issuer (as defined therein), if any, that is not a Loan Party;

(iii) the Perfection Certificate;

(iv) Control Agreements with respect to the deposit accounts and securities accounts of the Loan Parties;

(v) the ABL/Term Loan Intercreditor Agreement, duly executed and delivered by the parties thereto and acknowledged by each Loan Party;

(vi) the Subordinated Notes Intercreditor Agreement, duly executed and delivered by the parties thereto and acknowledged by each Loan Party;

(vii) the Encana Intercreditor Agreement, duly executed and delivered by the parties thereto and acknowledged by each Loan Party; and

(viii) the Intercompany Subordination Agreement.

(b) Plan of Reorganization. (i) The Administrative Agent shall have received copies of the Confirmation Order (as defined below), and all Reorganization Documents, which documents shall be on terms and conditions reasonably satisfactory to the Administrative Agent and no amendment, modification, supplement or waiver shall have

been made to any or all of the Confirmation Order and the Reorganization Documents, in each case, without the prior written consent of the Administrative Agent, that, in the reasonable judgment of the Administrative Agent, is adverse to the rights or interests of any or all of the Administrative Agent or the Lenders, (ii) the Bankruptcy Court shall have entered an order, in form and substance reasonably satisfactory to the Administrative Agent (the "Confirmation Order"), confirming the Plan of Reorganization and approving the solicitation procedures related to the Plan of Reorganization, (iii) the Plan Effective Date shall have occurred, and all conditions precedent to the effectiveness of the Plan shall have been satisfied or waived (with the prior consent of the Administrative Agent if the Administrative Agent determines such waiver is adverse to the Lenders) and (iv) the transactions contemplated by the Plan of Reorganization shall have been consummated on the Closing Date and substantially contemporaneously with the initial funding of the Term Loans hereunder.

(c) ABL Facility. The Administrative Agent shall have received fully executed copies of the ABL Credit Agreement and any other ABL Facility Documents reasonably requested by the Administrative Agent, and all conditions precedent thereunder to the effectiveness of such agreements shall have been satisfied or shall be satisfied substantially contemporaneously with the initial funding of the Term Loans hereunder.

(d) Subordinated Notes. The Administrative Agent shall have received fully executed copies of the Subordinated Notes Agreement and any other Subordinated Notes Loan Documents reasonably requested by the Administrative Agent (acting at the direction of the Required Lenders), and all conditions precedent thereunder to the effectiveness of such agreements shall have been satisfied or shall be satisfied substantially contemporaneously with the initial funding of the Term Loans hereunder.

(e) Outstanding Indebtedness. After giving effect to the consummation of the Transactions, the Borrower and its Subsidiaries shall have no outstanding Indebtedness for borrowed money, held by third parties, except for indebtedness incurred under the Facility, Indebtedness incurred under the ABL Facility, the Subordinated Notes, Indebtedness under the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements, Indebtedness that has been redeemed, released, defeased or otherwise discharged (or irrevocable notice for redemption thereof has been given) and any Existing Indebtedness and any Existing Capitalized Lease Obligations. Any Indebtedness to be refinanced shall have been repaid, defeased or otherwise discharged (or irrevocable notice for redemption thereof has been given) substantially concurrently with or prior to the satisfaction of the other conditions precedent set forth in this Subsection 6.1. The ABL Credit Agreement and the Subordinated Notes Agreement shall be in full force and effect on and after giving effect to the Transactions on the Closing Date. The Administrative Agent shall have received fully executed copies of the documentation with respect to Indebtedness under the Tax Restructuring Agreements and the Trade Payable Restructuring Agreement.

(f) [Reserved].

(g) Legal Opinion. The Administrative Agent shall have received an executed legal opinion of (i) Debevoise & Plimpton LLP, counsel to the Borrower and the other Loan Parties and (ii) Young Conaway Stargatt & Taylor, special Delaware counsel to the Borrower and the other Loan Parties, in each case in form and substance satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

(h) Officer's Certificate. The Administrative Agent shall have received a certificate from the Borrower, dated the Closing Date, substantially in the form of Exhibit G hereto, with appropriate insertions and attachments.

(i) Perfected Liens. The Collateral Agent shall have obtained a valid security interest in the Collateral covered by the Guarantee and Collateral Agreement (to the extent and with the priority contemplated therein and in the ABL/Term Loan Intercreditor Agreement); and all documents, instruments, filings, recordations and searches reasonably necessary in connection with the perfection and, in the case of the filings with the United States Patent and Trademark Office and the United States Copyright Office, protection of such security interests shall have been executed and delivered or made, or shall be delivered or made substantially concurrently with the initial funding of the Initial Term Loans or, in the case of UCC filings, written authorization to make such UCC filings shall have been delivered to the Collateral Agent, and none of such Collateral shall be subject to any other pledges, security interests or mortgages except for Permitted Liens or pledges, security interests or mortgages to be released on the Closing Date; provided that with respect to any such Collateral the security interest in which may not be perfected by filing of a UCC financing statement or by possession of Capital Stock of Domestic Subsidiaries, if perfection of the Collateral Agent's security interest in such Collateral may not be accomplished on or before the Closing Date after the applicable Loan Party's commercially reasonable efforts to do so, then delivery of documents and instruments for perfection of such security interest shall not constitute a condition precedent to the initial Borrowings hereunder if the applicable Loan Party agrees to deliver or cause to be delivered such documents and instruments, and take or cause to be taken such other actions as may be reasonably necessary to perfect such security interests in accordance with Subsections 7.13 and 7.14 and otherwise pursuant to arrangements to be mutually agreed by the applicable Loan Party and the Administrative Agent acting reasonably, but in no event later than the 30th day after the Closing Date (unless otherwise agreed by the Administrative Agent acting at the direction of the Required Lenders).

(j) Pledged Stock; Stock Powers. The Collateral Agent shall have received the certificates, if any, representing the Pledged Stock under (and as defined in) the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(k) Mortgages. The Collateral Agent shall have received a fully executed Mortgage covering the real property identified to be mortgaged on Schedule 5.8, in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may reasonably deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor of the Administrative Agent for

the benefit of the Secured Parties and evidence that all documentary, stamp, intangible, filing and recording taxes and fees have been paid or have otherwise been provided for in a manner reasonably satisfactory to the Collateral Agent, together with such UCC-1 financing statements or similar notices as the Collateral Agent shall reasonably deem appropriate with respect to such Mortgaged Fee Property, together with:

(i) evidence reasonably acceptable to the Collateral Agent that none of the improvements on any Mortgaged Fee Properties are located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area or if any improvements on the Mortgaged Fee Properties are located within a "special flood hazard" area, evidence of Borrower's receipt of notice from the Collateral Agent thereof and of a flood insurance policy as required by Subsection 7.5(b)(i) (if such insurance is required by applicable Law); and

(ii) evidence that all other action the Administrative Agent (acting at the direction of the Required Lenders) may deem necessary or advisable in order to create valid first and subsisting Liens on the property described in the Mortgages has been taken.

(l) Fees. (i) The Agents and the Lenders, respectively, shall have received all fees related to the Transactions payable to them to the extent due (which may be offset against the proceeds of the Facility), (ii) each Lender shall have received its pro rata share (based on its Initial Term Loan Commitment) of a closing fee equal to 10% of the total pro forma Capital Stock of New Holdings and (iii) each Lender shall have received its pro rata share (based on its Initial Term Loan Commitment) of a backstop fee equal to 10% of the total pro forma Capital Stock of New Holdings.

(m) Secretary's Certificate. The Administrative Agent shall have received a certificate from each Loan Party, dated the Closing Date, substantially in the form of Exhibit F hereto, with appropriate insertions and attachments reasonably satisfactory in form and substance to the Administrative Agent (acting at the direction of the Required Lenders), executed by a Responsible Officer and the Secretary or any Assistant Secretary or other authorized representative of such Loan Party.

(n) Corporate Proceedings of the Loan Parties. The Administrative Agent shall have received a copy of the resolutions or equivalent action, in form and substance reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders), of the Board of Directors of each Loan Party authorizing, as applicable, (i) the execution, delivery and performance of this Agreement, any Notes and the other Loan Documents to which it is or will be a party as of the Closing Date, (ii) the Extensions of Credit to such Loan Party (if any) contemplated hereunder and (iii) the granting by it of the Liens to be created pursuant to the Security Documents to which it will be a party as of the Closing Date, certified by the Secretary, any Assistant Secretary or other authorized representative of such Loan Party as of the Closing Date, which certificate shall be in substantially the form of Exhibit F hereto and shall state that the resolutions or other action thereby certified have not been amended, modified (except as

any later such resolution or other action may modify any earlier such resolution or other action), superseded or revoked in any respect and are in full force and effect as of the Closing Date.

(o) Incumbency Certificates of the Loan Parties. The Administrative Agent shall have received a certificate of each Loan Party, dated as of the Closing Date, as to the incumbency and signature of the officers or other authorized signatories of such Loan Party executing any Loan Document with respect to such Loan Party on the Closing Date.

(p) Governing Documents. The Administrative Agent shall have received copies of the Organizational Documents of each Loan Party, in each case certified as of the Closing Date as true, correct and complete copies (as amended through the Closing Date) by (if applicable) the Secretary of State and secretary or other authorized representative of such Loan Party and a certificate of good standing of each Loan Party in the state of organization of such Loan Party.

(q) [Reserved].

(r) Solvency. The Administrative Agent shall have received a certificate of the chief financial officer (or other comparable officer), of the Borrower certifying Solvency, after giving effect to the Transactions, of the Borrower and its Subsidiaries on a consolidated basis in substantially the form of Exhibit H hereto.

(s) PATRIOT Act. The Administrative Agent and the Lenders shall have received at least three days prior to the Closing Date all documentation and other information about the Loan Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act that has been requested in writing at least ten days prior to the Closing Date.

(t) Borrowing Notice. With respect to the initial Extensions of Credit, the Administrative Agent shall have received a Committed Loan Notice of such Borrowing as required by Subsection 2.3.

(u) Counsel Fees. The Borrower shall have paid all fees, charges and disbursements of (i) King & Spalding LLP, counsel to the Administrative Agent and (ii) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to certain of the Lenders, in each case to the extent invoiced at least one (1) Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

The making of the initial Extensions of Credit by the Lenders hereunder shall conclusively be deemed to constitute an acknowledgement by the Administrative Agent and each Lender that each of the conditions precedent set forth in this Subsection 6.1 shall have been

satisfied in each case, in accordance with its respective terms or shall have been irrevocably waived by such Person.

6.2 Conditions to Each Extension of Credit. The agreement of each Lender to make any Extension of Credit requested to be made by it on any date (including the Closing Date) is subject to the satisfaction or waiver of the following conditions precedent:

(a) Representations and Warranties. Each of the representations and warranties made by any Loan Party pursuant to this Agreement or any other Loan Document (or in any amendment, modification or supplement hereto or thereto) to which it is a party, and each of the representations and warranties contained in any certificate furnished at any time by or on behalf of any Loan Party pursuant to this Agreement or any other Loan Document shall, except to the extent that they relate to a particular date, be true and correct in all material respects on and as of such date as if made on and as of such date.

(b) No Default. No Default or Event of Default shall have occurred and be continuing on such date or after giving effect to the Extensions of Credit requested to be made on such date.

(c) Notice. The Administrative Agent shall have received a notice of such Borrowing in accordance with the requirements hereof.

Each Borrowing of Term Loans by the Borrower hereunder shall constitute a representation and warranty by the Borrower as of the date of such Borrowing that the conditions contained in this Subsection 6.2 have been satisfied.

SECTION 7

Affirmative Covenants

The Borrower hereby agrees that, from and after the Closing Date until payment in full of the Term Loans and all other Term Loan Facility Obligations then due and owing to any Lender or Agent hereunder, the Borrower shall and (except in the case of delivery of financial information, reports and notices) shall cause each of its respective Restricted Subsidiaries to:

7.1 Financial Statements. Furnish to the Administrative Agent for delivery to each Lender (and the Administrative Agent agrees to make and so deliver such copies):

(a) as soon as available, but in any event not later than the 90th day following the end of each Fiscal Year of the Borrower ending on or after the Closing Date, a copy of the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such year and the related consolidated statements of operations, changes in equity and cash flows for such year, setting forth, in each case, in comparative form the figures for and as of the end of the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit (provided that such report may contain a "going concern" or like qualification or exception, or

qualification arising out of the scope of the audit, if such qualification or exception is related solely to the Maturity Date occurring within one year from the date such report is delivered), by KPMG, LLP or other independent certified public accountants of nationally recognized standing not unacceptable to the Administrative Agent in its reasonable judgment (it being agreed that the furnishing of the Borrower's annual report on Form 10-K for such year, as filed with the United States Securities and Exchange Commission, will satisfy the Borrower's obligation under this Subsection 7.1(a) with respect to such year except with respect to the requirement that such financial statements be reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit);

(b) as soon as available, but in any event not later than the fifth Business Day after the 45th day following the end of each of the first three quarterly periods of each Fiscal Year of the Borrower, the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of operations and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth, in each case, in comparative form the figures for and as of the corresponding periods of the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit and other adjustments) (it being agreed that the furnishing of the Borrower's quarterly report on Form 10-Q for such quarter, as filed with the United States Securities and Exchange Commission, will satisfy the Borrower's obligations under this Subsection 7.1(b) with respect to such quarter);

(c) all such financial statements delivered pursuant to Subsection 7.1(a) or (b) to (and, in the case of any financial statements delivered pursuant to Subsection 7.1(b) shall be certified by a Responsible Officer of the Borrower to) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries in conformity with GAAP and to be (and, in the case of any financial statements delivered pursuant to Subsection 7.1(b) shall be certified by a Responsible Officer of the Borrower as being) in reasonable detail and prepared in accordance with GAAP applied consistently throughout the periods reflected therein and with prior periods that began on or after the Closing Date (except, in the case of any financial statements delivered pursuant to Subsection 7.1(b), for the absence of certain footnotes); and

(d) to the extent applicable, concurrently with any delivery of consolidated financial statements referred to in Subsections 7.1(a) and (b) above, related unaudited condensed consolidating financial statements and appropriate reconciliations reflecting the material adjustments necessary (as determined by the Borrower in good faith) to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

Notwithstanding the foregoing, (i) if any of the financial statements or other information is required to be delivered on an earlier date under the ABL Credit Agreement, the Borrower shall be required to deliver such financial statements or other information under this Agreement on or before such earlier date, and (ii) the Borrower shall be required to deliver all other financial statements and other information required to be delivered pursuant to Schedule 5.1 of the ABL

Credit Agreement and not specified in this Subsection 7.1 by the dates specified in the ABL Credit Agreement.

7.2 Certificates; Other Information. Furnish to the Administrative Agent for delivery to each Lender (and the Administrative Agent agrees to make and so deliver such copies):

(a) [Reserved].

(b) concurrently with the delivery of the financial statements and reports referred to in Subsections 7.1(a) and (b), (x) a certificate signed by a Responsible Officer of the Borrower (a "Compliance Certificate") (i) stating that, to the best of such Responsible Officer's knowledge, each of the Borrower and its Restricted Subsidiaries during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement or the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default, except, in each case, as specified in such certificate and (ii) if (A) delivered with the financial statements required by Subsection 7.1(a) and (B) the Consolidated Total Leverage Ratio as of the last day of the immediately preceding Fiscal Year was greater than or equal to [_____]:1.00, set forth in reasonable detail the amount of (and the calculations required to establish the amount of) Excess Cash Flow for the respective Fiscal Year covered by such financial statements and (y) a copy of management's discussion and analysis with respect to such financial statements;

(c) as soon as available, but in any event not later than the 30th day after the beginning of Fiscal Year 2016 of the Borrower and each Fiscal Year thereafter, a copy of the annual business plan by the Borrower of the projected operating budget (including an annual consolidated balance sheet, income statement and statement of cash flows of the Borrower and its Subsidiaries for each fiscal quarter of such Fiscal Year prepared in reasonable detail), each such business plan to be accompanied by a certificate signed by a Responsible Officer of the Borrower to the effect that such Responsible Officer believes such projections to have been prepared on the basis of reasonable assumptions at the time of preparation and delivery thereof;

(d) within five Business Days after the same are filed, copies of all financial statements and periodic reports which the Borrower may file with the United States Securities and Exchange Commission or any successor or analogous Governmental Authority;

(e) within five Business Days after the same are filed, copies of all registration statements and any amendments and exhibits thereto, which the Borrower may file with the United States Securities and Exchange Commission or any successor or analogous Governmental Authority;

(f) promptly, such additional financial and other information as any Agent or Lender may from time to time reasonably request; and

(g) promptly upon reasonable request from the Administrative Agent calculations of Consolidated EBITDA and other Fixed GAAP Terms as reasonably requested by the Administrative Agent upon receipt of a written notice from the Borrower electing to change the Fixed GAAP Date, which calculations shall show the calculations of the respective Fixed GAAP Terms both before and after giving effect to the change in the Fixed GAAP Date and identify the material change(s) in GAAP giving rise to the change in such calculations.

Documents required to be delivered pursuant to Subsection 7.1(a), 7.1(b), 7.1(d), 7.2(b), 7.2(c), 7.2(d), 7.2(e) or 7.2(g) may at the Borrower's option be delivered electronically in accordance with the terms of Subsection 11.2(d).

The Borrower hereby acknowledges that (i) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that: (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information (as defined in Subsection 11.16), they shall be treated as set forth in Subsection 11.16); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

7.3 Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all Taxes except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings diligently conducted and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower or any of its Restricted Subsidiaries, as the case may be, or except to the extent that failure to do so, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

7.4 Conduct of Business and Maintenance of Existence; Compliance with Contractual Obligations and Requirements of Law. Preserve, renew and keep in full force and

effect its existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, except as otherwise permitted pursuant to Subsection 8.2 or 8.7, provided that the Borrower and its Restricted Subsidiaries shall not be required to maintain any such rights, privileges or franchises, if the failure to do so would not reasonably be expected to have a Material Adverse Effect; and, comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

7.5 Maintenance of Property; Insurance. (a) (i) Keep all property useful and necessary in the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in good working order and condition, except where failure to do so would not reasonably be expected to have a Material Adverse Effect; (ii) maintain with financially sound and reputable insurance companies (or any Captive Insurance Subsidiary) insurance on, or self-insure, all property material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in at least such amounts and against at least such risks (but including in any event public liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business; (iii) furnish to the Administrative Agent, upon written request, information in reasonable detail as to the insurance carried; (iv) use commercially reasonable efforts to maintain property and liability policies that provide that in the event of any cancellation thereof during the term of the policy, either by the insured or by the insurance company, the insurance company shall provide to the secured party at least 30 days prior written notice thereof, or in the case of cancellation for non-payment of premium, ten days prior written notice thereof; (v) in the event of any material change in any of the property or liability policies referenced in the preceding clause (iv), use commercially reasonable efforts to provide the Administrative Agent with at least 30 days prior written notice thereof; and (vi) use commercially reasonable efforts to ensure that subject to the ABL/Term Loan Intercreditor Agreement at all times the Collateral Agent for the benefit of the Secured Parties, shall be named as an additional insured with respect to liability policies maintained by the Borrower and each Subsidiary Guarantor and the Collateral Agent for the benefit of the Secured Parties, shall be named as loss payee with respect to the property insurance maintained by the Borrower and each Subsidiary Guarantor; provided that, unless an Event of Default shall have occurred and be continuing, (A) the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by the Borrower and its Subsidiaries, (B) the Collateral Agent agrees that the Borrower and/or its applicable Subsidiary shall have the sole right to adjust or settle any claims under such insurance and (C) all proceeds from a Recovery Event shall be paid to the Borrower.

(b) With respect to each property of the Loan Parties subject to a Mortgage:

(i) If any portion of any such property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, such Loan Party shall maintain or cause to be maintained, flood insurance to the extent required by, and in compliance with, applicable law.

(ii) The applicable Loan Party promptly shall comply with and conform to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers

applicable to such party or to such property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of such property, except for such non-compliance or non-conformity as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The applicable Loan Party shall not use or permit the use of such property in any manner which would reasonably be expected to result in the cancellation of any insurance policy or would reasonably be expected to void coverage required to be maintained with respect to such property pursuant to clause (a) of this Subsection 7.5.

(iii) If the Borrower is in default of its obligations to insure or deliver any such prepaid policy or policies, the result of which would reasonably be expected to have a Material Adverse Effect, then the Administrative Agent, at its option upon ten (10) days' written notice to the Borrower, may effect such insurance from year to year at rates substantially similar to the rate at which the Borrower or any Restricted Subsidiary had insured such property, and pay the premium or premiums therefor, and the Borrower shall pay to the Administrative Agent on demand such premium or premiums so paid by the Administrative Agent with interest from the time of payment at a rate per annum equal to 3.00%.

(iv) If such property, or any part thereof, shall be destroyed or damaged and the reasonably estimated cost thereof would exceed $7,500,000, the Borrower shall give prompt notice thereof to the Administrative Agent. All insurance proceeds paid or payable in connection with any damage or casualty to any property shall be applied in the manner specified in the proviso to Subsection 7.5(a).

7.6 Inspection of Property; Books and Records; Discussions; Quarterly Management Call. In the case of the Borrower, keep proper books and records in a manner to allow financial statements to be prepared in conformity with GAAP consistently applied in respect of all material financial transactions and matters involving the material assets and business of the Borrower and its Restricted Subsidiaries, taken as a whole; and permit representatives of the Administrative Agent to visit and inspect any of its properties and examine and, to the extent reasonable, make abstracts from any of its books and records and to discuss the business, operations, properties and financial and other condition of the Borrower and its Restricted Subsidiaries with officers of the Borrower and its Restricted Subsidiaries and with its independent certified public accountants, in each case at any reasonable time, upon reasonable notice, and as often as may reasonably be desired; provided that representatives of the Borrower may be present during any such visits, discussions and inspections. Promptly after the time of delivery of financial statements with respect to the preceding fiscal quarter pursuant to Subsection 7.1(a) or Section 7.1(b) as applicable (and in no event more than 20 days after the time such financial statements are required to be delivered pursuant to Subsection 7.1(a) or Section 7.1(b), as applicable), the Borrower shall, and shall cause its Responsible Officers to, conduct a conference call with the Administrative Agent and the Lenders to discuss such financial statements.

7.7 Notices. Promptly give notice to the Administrative Agent and each Lender of:

(a) as soon as possible after a Responsible Officer of the Borrower knows thereof, the occurrence of any Default or Event of Default;

(b) as soon as possible after a Responsible Officer of the Borrower knows thereof, any default or event of default under any Contractual Obligation of the Borrower or any of its Restricted Subsidiaries, other than as previously disclosed in writing to the Lenders, which would reasonably be expected to have a Material Adverse Effect;

(c) as soon as possible after a Responsible Officer of the Borrower knows thereof, the occurrence of (i) any default or event of default under the ABL Credit Agreement, (ii) any default or event of default under the Subordinated Notes Agreement or (iii) any payment default under any Additional Obligations Documents or under any agreement or document governing other Indebtedness, in each case relating to Indebtedness in an aggregate principal amount equal to or greater than $[7,500,000];

(d) as soon as possible after a Responsible Officer of the Borrower knows thereof, any litigation, investigation or proceeding affecting the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect;

(e) the following events, as soon as possible and in any event within 30 days after a Responsible Officer of the Borrower or any of its Restricted Subsidiaries knows thereof: (i) the occurrence or expected occurrence of any Reportable Event (or similar event) with respect to any Single Employer Plan (or Foreign Plan), a failure to make any required contribution to a Single Employer Plan, Multiemployer Plan or Foreign Plan, the creation of any Lien on the property of the Borrower or its Restricted Subsidiaries in favor of the PBGC, a Plan or a Foreign Plan or any withdrawal from, or the full or partial termination, Reorganization or Insolvency of, any Multiemployer Plan or Foreign Plan; (ii) the institution of proceedings or the taking of any other formal action by the PBGC or the Borrower or any of its Restricted Subsidiaries or any Commonly Controlled Entity or any Multiemployer Plan which would reasonably be expected to result in the withdrawal from, or the termination, Reorganization or Insolvency of, any Single Employer Plan, Multiemployer Plan or Foreign Plan; provided, however, that no such notice will be required under clause (i) or (ii) above unless the event giving rise to such notice, when aggregated with all other such events under clause (i) or (ii) above, would be reasonably expected to result in a Material Adverse Effect; or (iii) the first occurrence after the Closing Date of an Underfunding under a Single Employer Plan or Foreign Plan that exceeds 10.0% of the value of the assets of such Single Employer Plan or Foreign Plan, in each case, determined as of the most recent annual valuation date of such Single Employer Plan or Foreign Plan on the basis of the actuarial assumptions used to determine the funding requirements of such Single Employer Plan or Foreign Plan as of such date;

(f) as soon as possible after a Responsible Officer of the Borrower knows thereof, (i) any release or discharge by the Borrower or any of its Restricted Subsidiaries of any Materials of Environmental Concern required to be reported under applicable Environmental Laws to any Governmental Authority, unless the Borrower reasonably

determines that the total Environmental Costs arising out of such release or discharge would not reasonably be expected to have a Material Adverse Effect; (ii) any condition, circumstance, occurrence or event not previously disclosed in writing to the Administrative Agent that would reasonably be expected to result in liability or expense under applicable Environmental Laws, unless the Borrower reasonably determines that the total Environmental Costs arising out of such condition, circumstance, occurrence or event would not reasonably be expected to have a Material Adverse Effect, or would not reasonably be expected to result in the imposition of any lien or other material restriction on the title, ownership or transferability of any facilities and properties owned, leased or operated by the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to result in a Material Adverse Effect; and (iii) any proposed action to be taken by the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to subject the Borrower or any of its Restricted Subsidiaries to any material additional or different requirements or liabilities under Environmental Laws, unless the Borrower reasonably determines that the total Environmental Costs arising out of such proposed action would not reasonably be expected to have a Material Adverse Effect;

(g) any loss, damage, or destruction to a significant portion of the Term Loan Priority Collateral, whether or not covered by insurance; and

(h) not less than 30 days prior to any change in the jurisdiction of organization of any Loan Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

Each notice pursuant to this Subsection 7.7 shall be accompanied by a statement of a Responsible Officer of the Borrower (and, if applicable, the relevant Commonly Controlled Entity or Restricted Subsidiary) setting forth details of the occurrence referred to therein and stating what action the Borrower (or, if applicable, the relevant Commonly Controlled Entity or Restricted Subsidiary) proposes to take with respect thereto.

7.8 Environmental Laws. (a) (i) Comply substantially with, and require substantial compliance by all tenants, subtenants, contractors, and invitees with, all applicable Environmental Laws; (ii) obtain, comply substantially with and maintain any and all Environmental Permits necessary for its operations as conducted and as planned; and (iii) require that all tenants, subtenants, contractors, and invitees obtain, comply substantially with and maintain any and all Environmental Permits necessary for their operations as conducted and as planned, with respect to any property leased or subleased from, or operated by the Borrower or its Restricted Subsidiaries. For purposes of this Subsection 7.8(a), noncompliance shall not constitute a breach of this covenant, provided that, upon learning of any actual or suspected noncompliance, the Borrower and any such affected Restricted Subsidiary shall promptly undertake and diligently pursue reasonable efforts, if any, to achieve compliance, and provided, further, that in any case such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(b) Promptly comply, in all material respects, with all orders and directives of all Governmental Authorities regarding Environmental Laws, other than such orders or directives (i) as to which the failure to comply would not reasonably be expected to result in a Material

Adverse Effect or (ii) as to which: (x) appropriate reserves have been established in accordance with GAAP; (y) an appeal or other appropriate contest is or has been timely and properly taken and is being diligently pursued in good faith; and (z) if the effectiveness of such order or directive has not been stayed, the failure to comply with such order or directive during the pendency of such appeal or contest would not reasonably be expected to have a Material Adverse Effect.

7.9 After-Acquired Real Property and Fixtures; Subsidiaries. (a) With respect to any owned real property or fixtures thereon, in each case with a purchase price or a fair market value at the time of acquisition of at least $250,000, in which any Loan Party acquires ownership rights at any time after the Closing Date (or owned by any Subsidiary that becomes a Loan Party after the Closing Date), promptly grant to the Collateral Agent for the benefit of the Secured Parties, a Lien of record on all such owned real property and fixtures pursuant to a Mortgage or otherwise, upon terms reasonably satisfactory in form and substance to the Collateral Agent and in accordance with any applicable requirements of any Governmental Authority (including any required appraisals of such property under FIRREA and flood determinations under Regulation H of the Board); provided that (i) nothing in this Subsection 7.9 shall defer or impair the attachment or perfection of any security interest in any Collateral covered by any of the Security Documents which would attach or be perfected pursuant to the terms thereof without action by the Borrower, any of its Restricted Subsidiaries or any other Person and (ii) no such Lien shall be required to be granted as contemplated by this Subsection 7.9 on any owned real property or fixtures the acquisition of which is, or is to be, within 180 days of such acquisition, financed or refinanced, in whole or in part through the incurrence of Indebtedness, until such Indebtedness is repaid in full (and not refinanced) or, as the case may be, the Borrower determines not to proceed with such financing or refinancing. In connection with any such grant to the Collateral Agent, for the benefit of the Secured Parties, of a Lien of record on any such real property pursuant to a Mortgage or otherwise in accordance with this Subsection 7.9, the Borrower or such Restricted Subsidiary shall deliver or cause to be delivered to the Collateral Agent corresponding UCC fixture filings and any surveys, appraisals (including any required appraisals of such property under FIRREA or in connection with flood determinations under Regulation H of the Board), title insurance policies, environmental reports, legal opinions and other documents in connection with such grant of such Lien obtained by it in connection with the acquisition of such ownership rights in such real property consistent with the requirements of Subsection 6.1(k) or as the Collateral Agent shall reasonably request (in light of the value of such real property and the cost and availability of such UCC fixture filings, surveys, appraisals, title insurance policies, environmental reports, legal opinions and other documents and whether the delivery of such UCC fixture filings, surveys, appraisals, title insurance policies, environmental reports, legal opinions and other documents would be customary in connection with such grant of such Lien in similar circumstances).

(b) With respect to any Domestic Subsidiary that is a Wholly Owned Subsidiary (other than an Excluded Subsidiary) (i) created or acquired (including by reason of any Foreign Subsidiary Holdco ceasing to constitute the same) subsequent to the Closing Date by the Borrower or any of its Domestic Subsidiaries that are Wholly Owned Subsidiaries (other than an Excluded Subsidiary), (ii) being designated as a Restricted Subsidiary, (iii) ceasing to be an Immaterial Subsidiary or other Excluded Subsidiary as provided in the applicable definition thereof after the expiry of any applicable period referred to in such definition, (iv) that becomes a

guarantor under either the ABL Facility or any of the Subordinated Notes Documents or (v) that becomes a Domestic Subsidiary as a result of a transaction pursuant to, and permitted by, Subsection 8.2 (other than an Excluded Subsidiary), promptly notify the Administrative Agent of such occurrence and, if the Administrative Agent or the Required Lenders so request, promptly (i) execute and deliver to the Collateral Agent for the benefit of the Secured Parties such amendments to the Guarantee and Collateral Agreement as the Collateral Agent shall reasonably deem necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest (as and to the extent provided in the Guarantee and Collateral Agreement) in the Capital Stock of such new Domestic Subsidiary owned directly by the Borrower or any of its Domestic Subsidiaries that are Wholly Owned Subsidiaries (other than Excluded Subsidiaries), (ii) deliver to the Collateral Agent the certificates (if any) representing such Capital Stock, together with undated stock powers, executed and delivered in blank by a duly authorized officer of the parent of such new Domestic Subsidiary and (iii) cause such new Domestic Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and (B) to take all actions reasonably deemed by the Collateral Agent to be necessary or advisable to cause the Lien created by the Guarantee and Collateral Agreement in such new Domestic Subsidiary's Collateral to be duly perfected in accordance with all applicable Requirements of Law (as and to the extent provided in the Guarantee and Collateral Agreement), including the filing of financing statements in such jurisdictions as may be reasonably requested by the Collateral Agent and the delivery of executed Control Agreements with respect to the deposit and securities accounts (other than certain customary excluded accounts to the extent set forth in the Guaranty and Collateral Agreement) of such Domestic Subsidiary.

(c) With respect to any Foreign Subsidiary or Domestic Subsidiary that is not a Wholly Owned Subsidiary created or acquired subsequent to the Closing Date by the Borrower or any of its Domestic Subsidiaries that are Wholly Owned Subsidiaries (in each case, other than any Excluded Subsidiary), the Capital Stock of which is owned directly by the Borrower or a Domestic Subsidiary that is a Wholly Owned Subsidiary (other than an Excluded Subsidiary), promptly notify the Administrative Agent of such occurrence and if the Administrative Agent or the Required Lenders so request, promptly (i) execute and deliver to the Collateral Agent a new pledge agreement or such amendments to the Guarantee and Collateral Agreement as the Collateral Agent shall reasonably deem necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected first priority security interest (as and to the extent provided in the Guarantee and Collateral Agreement) in the Capital Stock of such new Subsidiary that is directly owned by the Borrower or any Domestic Subsidiary that is a Wholly Owned Subsidiary (other than an Excluded Subsidiary) and (ii) to the extent reasonably deemed advisable by the Collateral Agent, deliver to the Collateral Agent the certificates, if any, representing such Capital Stock, together with undated stock powers, executed and delivered in blank by a duly authorized officer of the relevant parent of such new Subsidiary and take such other action as may be reasonably deemed by the Collateral Agent to be necessary or desirable to perfect the Collateral Agent's security interest therein (provided that in either case in no event shall more than 65.0% of each series of Capital Stock of any new Foreign Subsidiary be required to be so pledged and, provided, further, that in either case no such pledge or security shall be required with respect to any Subsidiary that is not a Wholly Owned Subsidiary and a Restricted Subsidiary to the extent that the grant of such pledge or security interest would violate the terms

of any agreements under which the Investment by the Borrower or any of its Restricted Subsidiaries was made therein).

(d) At its own expense, execute, acknowledge and deliver, or cause the execution, acknowledgement and delivery of, and thereafter register, file or record in an appropriate governmental office, any document or instrument reasonably deemed by the Collateral Agent to be necessary or desirable for the creation, perfection and priority and the continuation of the validity, perfection and priority of the foregoing Liens or any other Liens created pursuant to the Security Documents (to the extent the Collateral Agent determines, in its reasonable discretion, that such action is required to ensure the perfection or the enforceability as against third parties of its security interest in such Collateral) in each case in accordance with, and to the extent required by, the Guarantee and Collateral Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, (A) the foregoing requirements shall be subject to the terms of the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement and, in the event of any conflict with such terms, the terms of the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement, as applicable, shall control, (B) no security interest or lien is or will be granted pursuant to any Loan Document or otherwise in any right, title or interest of any of the Borrower or any of its Subsidiaries in, and "Collateral" shall not include, any Excluded Asset, (C) no Loan Party or any Affiliate thereof shall be required to take any action in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction in order to create any security interests in assets located or titled outside of the U.S. or to perfect any security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction) and (D) nothing in this Subsection 7.9 shall require that any Subsidiary grant a Lien with respect to any property or assets in which such Subsidiary acquires ownership rights to the extent that the Administrative Agent, in its reasonable judgment, determines that the granting of such a Lien is impracticable.

7.10 Use of Proceeds. Use the proceeds of the Term Loans only for the purposes set forth in Subsection 5.16.

7.11 Commercially Reasonable Efforts to Maintain Ratings. At all times, the Borrower shall use commercially reasonable efforts to maintain ratings of the Initial Term Loans and a corporate rating and corporate family rating, as applicable, for the Borrower by each of S&P and Moody's.

7.12 Accounting Changes. The Borrower will, for financial reporting purposes, cause the Borrower's and each of its Subsidiaries' Fiscal Years to end on December 31st of each calendar year; provided that the Borrower may, no more than once during the term of the Facility, upon written notice to the Administrative Agent, change the financial reporting convention specified above to any other financial reporting convention, in which case the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

7.13 Post-Closing Security Perfection. The Borrower agrees to deliver or cause to be delivered such documents and instruments, and take or cause to be taken such other actions as may be reasonably necessary to provide the perfected mortgages and other security interests described in the proviso to Subsection 6.1(i) that are not so provided on the Closing Date, and in any event to provide such perfected mortgages and other security interests and to satisfy such other conditions within the applicable time periods set forth on Schedule 7.13, as such time periods may be extended by the Administrative Agent, in its sole discretion.

7.14 [Post-Closing Matters].

SECTION 8

Negative Covenants

The Borrower hereby agrees that, from and after the Closing Date until payment in full of the Term Loans and all other Term Loan Facility Obligations then due and owing to any Lender or any Agent hereunder:

8.1 Limitation on Indebtedness. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness; provided, however, that the Borrower or any Subsidiary Guarantor may Incur Indebtedness if on the date of the Incurrence of such Indebtedness, after giving effect to the Incurrence thereof, the Consolidated Coverage Ratio would be equal to or greater than 2.00:1.00 and the Consolidated Total Leverage Ratio would be less than 3.00:1.00.

(b) Notwithstanding the foregoing Subsection 8.1(a), the Borrower and its Restricted Subsidiaries may Incur the following Indebtedness:

(i) (I) Indebtedness Incurred by the Borrower and the Guarantors (a) pursuant to this Agreement and the other Loan Documents and (b) constituting Additional Obligations (and Refinancing Indebtedness in respect thereof) and any Refinancing Indebtedness in respect thereof, in a maximum principal amount for all such Indebtedness at any time outstanding not exceeding in the aggregate the amount equal to the sum of (A) $60,000,000 plus any increase to the principal amount thereof in the form of PIK Interest pursuant to this Agreement, plus (B) without duplication of incremental amounts included in the definition of "Refinancing Indebtedness", in the event of any refinancing of any such Indebtedness, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing, (II) Indebtedness Incurred by the Borrower and the Guarantors pursuant to the ABL Facility and any Refinancing Indebtedness in respect thereof, in a maximum principal amount for all such Indebtedness at any time outstanding not exceeding in the aggregate the amount equal to the sum of (A) the lesser of (x) $75,000,000 and (y) an amount equal to the sum of (1) the Borrowing Base (measured, for the avoidance of doubt, at the time of such Incurrence) plus (2) the Additional Availability Amount (as defined in the ABL Credit Agreement as of the Closing Date) plus (3) any overadvance under the ABL Credit Agreement permitted to exist pursuant to the terms of the ABL Credit Agreement as of the Closing Date, plus (B) without duplication of incremental amounts included in the

definition of "Refinancing Indebtedness", in the event of any refinancing of any such Indebtedness, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing, (III) the Subordinated Notes in an aggregate principal amount not to exceed $55,000,000 plus any increase to the principal thereof in the form of capitalized (PIK) interest pursuant to the Subordinated Notes Documents and any refinancing of such Indebtedness, to the extent permitted by the Subordinated Notes Intercreditor Agreement, and (IV) Indebtedness Incurred by the Borrower and the Guarantors (a) pursuant to this Agreement and the other Loan Documents, (b) pursuant to the ABL Facility, (c) pursuant to the Subordinated Notes Facility and (d) constituting Additional Obligations, together with Refinancing Indebtedness in respect of the Indebtedness described in subclauses (a) and (d) of this clause (IV), in a maximum principal amount for all such Indebtedness not exceeding in the aggregate the Maximum Incremental Facilities Amount plus the aggregate amount of all fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such Refinancing Indebtedness;

(ii) Indebtedness (A) of any Restricted Subsidiary to the Borrower, or (B) of the Borrower or any Restricted Subsidiary to any Restricted Subsidiary; provided that in the case of this Subsection 8.1(b)(ii), any subsequent issuance or transfer of any Capital Stock of such Restricted Subsidiary to which such Indebtedness is owed, or other event, that results in such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of such Indebtedness (except to the Borrower or a Restricted Subsidiary) will be deemed, in each case, an Incurrence of such Indebtedness by the issuer thereof not permitted by this Subsection 8.1(b)(ii);

(iii) Indebtedness represented by (A) any Indebtedness (other than the Indebtedness described in Subsections 8.1(b)(i) and (ii)) outstanding on the Closing Date and set forth on Schedule 8.1 and (B) any Refinancing Indebtedness Incurred in respect of any Indebtedness described in this Subsection 8.1(b)(iii) or Subsection 8.1(a);

(iv) Purchase Money Obligations, Capitalized Lease Obligations, and in each case any Refinancing Indebtedness with respect thereto not exceed an amount equal to the greater of $15,000,000 and 5% of Consolidated Total Assets in the aggregate at any time outstanding;

(v) Indebtedness consisting of (x) accommodation guarantees for the benefit of trade creditors of the Borrower or any of its Restricted Subsidiaries or (y) Indebtedness to Encana, not to exceed $**[_____]** in the aggregate at any time outstanding under clauses (x) and (y) of this Subsection 8.1(b)(v);

(vi) (A) Guarantees by the Borrower or any Restricted Subsidiary of Indebtedness or any other obligation or liability of the Borrower or any Restricted Subsidiary (other than any Indebtedness Incurred by the Borrower or such Restricted Subsidiary, as the case may be, in violation of this Subsection 8.1), or (B) without limiting Subsection 8.6, Indebtedness of the Borrower or any Restricted Subsidiary arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Borrower or any Restricted Subsidiary (other than any Indebtedness

Incurred by the Borrower or such Restricted Subsidiary, as the case may be, in violation of this Subsection 8.1);

(vii) Indebtedness of the Borrower or any Restricted Subsidiary (A) arising from the honoring of a check, draft or similar instrument of such Person drawn against insufficient funds, provided that such Indebtedness is extinguished within five Business Days of its Incurrence, or (B) consisting of guarantees, indemnities, obligations in respect of earnouts or other purchase price adjustments, or similar obligations, Incurred in connection with the acquisition or disposition of any business, assets or Person;

(viii) Indebtedness of the Borrower or any Restricted Subsidiary in respect of (A) letters of credit, bankers' acceptances or other similar instruments or obligations issued, or relating to liabilities or obligations incurred, in the ordinary course of business (including those issued to governmental entities in connection with self-insurance under applicable workers' compensation statutes), or (B) completion guarantees, surety, judgment, appeal or performance bonds, or other similar bonds, instruments or obligations, provided, or relating to liabilities or obligations incurred, in the ordinary course of business, or (C) Hedging Obligations, entered into for bona fide hedging purposes and not for speculation purposes; provided that Hedging Obligations that are provided by any Person that is not a Lender, an Affiliate of a Lender or a lender or Affiliate of a lender under this Agreement or the ABL Facility shall not exceed $**[10,000,000]** in the aggregate at any time outstanding, or (D) Management Guarantees, or (E) the financing of insurance premiums in the ordinary course of business, or (F) take-or-pay obligations under supply arrangements incurred in the ordinary course of business, or (G) netting, overdraft protection and other arrangements arising under standard business terms of any bank at which the Borrower or any Restricted Subsidiary maintains an overdraft, cash pooling or other similar facility or arrangement, or (H) Bank Products Obligations;

(ix) [Reserved];

(x) Indebtedness of (A) the Borrower or any Restricted Subsidiary Incurred to finance or refinance, or otherwise Incurred in connection with, any acquisition of assets (including Capital Stock), business or Person, or any merger or consolidation of any Person with or into the Borrower or any Restricted Subsidiary; or (B) any Person that is acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary (including Indebtedness thereof Incurred in connection with any such acquisition, merger or consolidation), provided that on the date of such acquisition, merger or consolidation, after giving effect thereto, either (1) the Borrower would have a Consolidated Total Leverage Ratio equal to or less than **[2.25]**:1.00 or (2) the Consolidated Total Leverage Ratio of the Borrower would equal or be less than the Consolidated Total Leverage Ratio of the Borrower immediately prior to giving effect thereto; and any Refinancing Indebtedness with respect to any such Indebtedness;

(xi) Indebtedness under the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements;

(xii) Indebtedness issuable upon the conversion or exchange of shares of Disqualified Stock issued in accordance with Subsection 8.1(a), and any Refinancing Indebtedness with respect thereto;

(xiii) Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate principal amount at any time outstanding not exceeding an amount equal to the greater of $10,000,000 and 5.0% of Consolidated Total Assets; and

(xiv) Indebtedness of the Borrower or any Restricted Subsidiary Incurred as consideration in connection with any acquisition of assets (including Capital Stock), business or Person, or any merger or consolidation of any Person with or into the Borrower or any Restricted Subsidiary, and any Refinancing Indebtedness with respect thereto, in an aggregate principal amount at any time outstanding not exceeding $25,000,000; and

(xv) Indebtedness of the Borrower or any Restricted Subsidiary under the SBI Secured Note (as defined in the Plan of Reorganization) in an amount not to exceed $4,500,000.

(c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Subsection 8.1, (i) any other obligation of the obligor on such Indebtedness (or of any other Person who could have Incurred such Indebtedness under this Subsection 8.1) arising under any Guarantee, Lien or letter of credit, bankers' acceptance or other similar instrument or obligation supporting such Indebtedness shall be disregarded to the extent that such Guarantee, Lien or letter of credit, bankers' acceptance or other similar instrument or obligation secures the principal amount of such Indebtedness; (ii) in the event that Indebtedness incurred pursuant to Subsection 8.1(b) meets the criteria of more than one of the types of Indebtedness described in Subsection 8.1(b), the Borrower, in its sole discretion, shall classify such item of Indebtedness and may include the amount and type of such Indebtedness in one or more of such clauses of Subsection 8.1(b) (including in part under one such clause and in part under another such clause); provided that (if the Borrower shall so determine) any Indebtedness Incurred pursuant to Subsection 8.1(b)(xiii) shall cease to be deemed Incurred or outstanding for purposes of such clause but shall be deemed Incurred for the purposes of Subsection 8.1(a) from and after the first date on which the Borrower or any Restricted Subsidiary could have Incurred such Indebtedness under Subsection 8.1(a) without reliance on such clause; (iii) in the event that Indebtedness could be Incurred in part under paragraph (a) above, the Borrower, in its sole discretion, may classify a portion of such Indebtedness as having been Incurred under paragraph (a) above and the remainder of such Indebtedness as having been Incurred under paragraph (b) above; (iv) the amount of Indebtedness issued at a price that is less than the principal amount thereof shall be equal to the amount of the liability in respect thereof determined in accordance with GAAP; and (v) the principal amount of Indebtedness outstanding under any subclause of Subsection 8.1(b) shall be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness. Notwithstanding anything herein to the contrary, Indebtedness Incurred by the Borrower on the Closing Date under this Agreement or the ABL Credit Agreement shall be classified as Incurred under paragraph (b)(i) of this covenant, and not under paragraph (a) of this covenant.

(d) For purposes of determining compliance with any dollar denominated restriction on the Incurrence of Indebtedness denominated in a foreign currency, the dollar equivalent principal amount of such Indebtedness Incurred pursuant thereto shall be calculated based on the relevant currency exchange rate in effect on the date that such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving or deferred draw Indebtedness, provided that (x) the dollar equivalent principal amount of any such Indebtedness outstanding on the Closing Date shall be calculated based on the relevant currency exchange rate in effect on the Closing Date, (y) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency (or in a different currency from such Indebtedness so being Incurred), 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 (whichever is higher) of such Indebtedness being refinanced plus (ii) the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing and (z) the dollar equivalent principal amount of Indebtedness denominated in a foreign currency and Incurred pursuant to this Agreement, the ABL Facility shall be calculated based on the relevant currency exchange rate in effect on, at the Borrower's option, (A) the Closing Date, (B) any date on which any of the respective commitments under this Agreement or the ABL Facility shall be reallocated between or among facilities or subfacilities thereunder, or on which such rate is otherwise calculated for any purpose thereunder, or (C) the date of such Incurrence. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

8.2 Limitation on Restricted Payments. (a) The Borrower shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to (i) declare or pay any dividend or make any distribution on or in respect of its Capital Stock (including any such payment in connection with any merger or consolidation to which the Borrower is a party) except (x) dividends or distributions payable solely in its Capital Stock (other than Disqualified Stock) and (y) dividends or distributions payable to the Borrower or any Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to other holders of its Capital Stock on no more than a pro rata basis, measured by value), (ii) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Borrower held by Persons other than the Borrower or a Restricted Subsidiary (other than any acquisition of Capital Stock deemed to occur upon the exercise of options if such Capital Stock represents a portion of the exercise price thereof), (iii) voluntarily purchase, repurchase, redeem, defease or otherwise voluntarily acquire or retire for value, prior to scheduled maturity, scheduled repayment or scheduled sinking fund payment, any Junior Debt (other than a purchase, repurchase, redemption, defeasance or other acquisition or retirement for value in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value), (iv) make any payment on account of the Subordinated Notes or (v) make any Investment other than (x) in New Holdings (a) solely for distribution to the holders of the Capital Stock of New Holdings and their respective Affiliates and Controlled Investment Affiliates and (b) for

operating expenses incurred in the ordinary course of business of New Holdings, including, without limitation, expenses related to maintaining its legal existence and taxes or (v) any other Permitted Investment in any Person (any such dividend, distribution, purchase, repurchase, redemption, defeasance, other acquisition or retirement or Investment being herein referred to as a "Restricted Payment"), if at the time the Borrower or such Restricted Subsidiary makes such Restricted Payment and after giving effect thereto:

(1) An Event of Default has occurred and is continuing or would result therefrom;

(2) the Consolidated Total Leverage Ratio would be greater than 2.25:1.00 or Total Liquidity would be less than $20,000,000; or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments (the amount so expended, if other than in cash, to be as determined in good faith by the Board of Directors, whose determination shall be conclusive and evidenced by a resolution of the Board of Directors) declared or made in any Fiscal Year would exceed $10,000,000.

(b) The provisions of Subsection 8.2(a) do not prohibit any of the following (each, a "Permitted Payment"):

(i) (x) any purchase, redemption, repurchase, defeasance or other acquisition or retirement of Capital Stock of the Borrower ("Treasury Capital Stock") or any Junior Debt made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the issuance or sale of, Capital Stock of the Borrower (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary) ("Refunding Capital Stock") or a capital contribution to the Borrower, in each case other than Excluded Contributions; and (y) if immediately prior to such acquisition or retirement of such Treasury Capital Stock, dividends thereon were permitted pursuant to **[Subsection 8.2(b)(xi)]**, dividends on such Refunding Capital Stock in an aggregate amount per annum not exceeding the aggregate amount per annum of dividends so permitted on such Treasury Capital Stock;

(ii) any dividend paid or the consummation of any redemption within 60 days after the date of declaration thereof or of giving of any notice of redemption, as applicable, if at such date of declaration or the giving of such notice, such dividend or redemption would have complied with Subsection 8.2(a);

(iii) Investments or other Restricted Payments in an aggregate amount outstanding at any time not to exceed the amount of Excluded Contributions;

(iv) payments by the Borrower to repurchase or otherwise acquire Capital Stock of the Borrower (including any options, warrants or other rights in respect thereof), from Management Investors (including any repurchase or acquisition by reason of the Borrower retaining any Capital Stock, option, warrant or other right in respect of tax withholding obligations, and any related payment in respect of any such obligation), such

payments not to exceed an amount equal to $1,000,000 in any Fiscal Year; provided that any cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary by any Management Investor in connection with any repurchase or other acquisition of Capital Stock (including any options, warrants or other rights in respect thereof) from any Management Investor shall not constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(v) regularly scheduled payments of interest on the obligations under the Subordinated Notes on a non-accelerated basis in accordance with Subsection [ ] of the Subordinated Notes Agreement as in effect on the Closing Date;

(vi) Restricted Payments (including loans or advances) in an aggregate amount not to exceed (net of repayments of any such loans or advances) $2,500,000 in any Fiscal Year;

(vii) (A) with respect to each taxable year (or portion thereof) of the Borrower during which the Borrower qualifies as a partnership or a disregarded entity for U.S. federal income tax purposes, Permitted Tax Distributions and (B) with respect to each taxable year (or portion thereof) of the Borrower during which the Borrower qualifies as a corporation for U.S. federal income tax purposes, without duplication of any loans, advances, dividends, distributions or payments made pursuant to clause (viii)(A) of this Subsection 8.2(b), loans, advances, dividends or distributions to any Parent Entity or other payments by the Borrower or any Restricted Subsidiary, to pay, or permit any Parent Entity to pay, federal, state, foreign, provincial or local taxes measured by income for which any Parent Entity is liable up to an amount not to exceed, with respect to federal taxes, the amount of any such taxes that the Borrower and its Subsidiaries would have been required to pay on a separate company basis, or on a consolidated basis as if the Borrower had filed a consolidated return on behalf of an affiliated group (as defined in Section 1504 of the Code) of which it were the common parent, or with respect to state and local taxes, the amount of any such taxes that the Borrower and its Subsidiaries would have been required to pay on a separate company basis, or on a consolidated, combined, unitary or affiliated basis as if the Borrower had filed a consolidated, combined, unitary or affiliated return on behalf of an affiliated group (as defined in the applicable state or local tax laws for filing such return) consisting only of the Borrower and its Subsidiaries;

(viii) loans, advances, dividends or distributions to any Parent Entity or other payments by the Borrower or any Restricted Subsidiary (A) pursuant to a Tax Sharing Agreement without duplication of any loans, advances, dividends, distributions or payments made pursuant to clause (vii)(B) of this Subsection 8.2(b), or (B) to pay or permit any Parent Entity to pay (but without duplication) any Parent Expenses or any Related Taxes;

(ix) payments by the Borrower, or loans, advances, dividends or distributions by the Borrower to any Parent Entity to make payments, to holders of Capital Stock of the Borrower or any Parent Entity in lieu of issuance of fractional shares of such Capital Stock;

(x) dividends or other distributions of, or Investments paid for or made with, Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries;

(xi) [reserved];

(xii) the declaration and payment of dividends (other than cash dividends) to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with the terms of Subsection 8.1;

(xiii) any purchase, redemption, repurchase, defeasance or other acquisition or retirement of any Junior Debt (v) made by exchange for, or out of the proceeds of the Incurrence of, (1) Refinancing Indebtedness Incurred in compliance with Subsection 8.1 or (2) new Indebtedness of the Borrower, or a Guarantor, as the case may be, Incurred in compliance with Subsection 8.1, so long as such new Indebtedness satisfies all requirements for "Refinancing Indebtedness" set forth in the definition thereof applicable to a refinancing of such Junior Debt, (w) from Net Available Cash or any equivalent amount to the extent permitted by Subsection 8.4, (x) from declined amounts as contemplated by Subsection 4.4(e), (y) following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only if the Borrower shall have complied with Subsections 8.8(a) prior to purchasing, redeeming, repurchasing, defeasing, acquiring or retiring such Junior Debt or (z) constituting Acquired Indebtedness; and

(xiv) Investments in Unrestricted Subsidiaries in an aggregate amount outstanding at any time not exceeding the greater of $10,000,000 and 3.0% of Consolidated Total Assets;

provided that (A) in the case of Subsections 8.2(b)(ii), (v) and (ix), the net amount of any such Permitted Payment shall be included in subsequent calculations of the amount of Restricted Payments, (B) in all cases other than pursuant to clause (A) immediately above, the net amount of any such Permitted Payment shall be excluded in subsequent calculations of the amount of Restricted Payments and (C) solely with respect to Subsection 8.2(b)(vi), no Event of Default under Subsection 9.1(a), (c), (e), (f), (h), (i), (j) or (k) or other Event of Default known to the Borrower shall have occurred and be continuing at the time of any such Permitted Payment after giving effect thereto. The Borrower, in its sole discretion, may classify any Investment or other Restricted Payment as being made in part under one of the clauses or subclauses of this Subsection 8.2(b) (or, in the case of any Investment, the clauses or subclauses of Permitted Investments) and in part under one or more other such provisions (or, as applicable, clauses or subclauses).

8.3 Limitation on Restrictive Agreements. The Borrower will not, and will not permit any Restricted Subsidiary to, create or otherwise cause to exist or become effective any consensual encumbrance or restriction on (i) the ability of the Borrower or any of its Restricted Subsidiaries (other than any Foreign Subsidiaries or any Excluded Subsidiaries) to create, incur, assume or suffer to exist any Lien in favor of the Lenders in respect of obligations and liabilities under this Agreement or any other Loan Documents upon any of its property, assets or revenues constituting Collateral as and to the extent contemplated by this Agreement

and the other Loan Documents, whether now owned or hereafter acquired or (ii) the ability of any Restricted Subsidiary to (x) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Borrower, (y) make any loans or advances to the Borrower or (z) transfer any of its property or assets to the Borrower (provided that dividend or liquidation priority between classes of Capital Stock, or subordination of any obligation (including the application of any remedy bars thereto) to any other obligation, will not be deemed to constitute such an encumbrance or restriction), except any encumbrance or restriction:

(a) pursuant to an agreement or instrument in effect at or entered into on the Closing Date, this Agreement and the other Loan Documents, the ABL Facility Documents, the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Documents, the Subordinated Notes Intercreditor Agreement and, on and after the execution and delivery thereof, any Junior Lien Intercreditor Agreement, Other Intercreditor Agreement and Additional Obligations Documents;

(b) pursuant to any agreement or instrument of a Person, or relating to Indebtedness or Capital Stock of a Person, which Person is acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary, or which agreement or instrument is assumed by the Borrower or any Restricted Subsidiary in connection with an acquisition of assets from such Person or any other transaction entered into in connection with any such acquisition, merger or consolidation, as in effect at the time of such acquisition, merger, consolidation or transaction (except to the extent that such Indebtedness was incurred to finance, or otherwise in connection with, such acquisition, merger, consolidation or transaction); provided that for purposes of this Subsection 8.3(b), if a Person other than the Borrower is the Successor Borrower with respect thereto, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed, as the case may be, by the Borrower or a Restricted Subsidiary, as the case may be, when such Person becomes such Successor Borrower;

(c) pursuant to an agreement or instrument (a "Refinancing Agreement") effecting a refinancing of Indebtedness Incurred or outstanding pursuant or relating to, or that otherwise extends, renews, refunds, refinances or replaces, any agreement or instrument referred to in Subsection 8.3(a) or (b) or this Subsection 8.3(c) (an "Initial Agreement") or that is, or is contained in, any amendment, supplement or other modification to an Initial Agreement or Refinancing Agreement (an "Amendment"); provided, however, that the encumbrances and restrictions contained in any such Refinancing Agreement or Amendment taken as a whole are not materially less favorable to the Lenders than encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such Refinancing Agreement or Amendment relates (as determined in good faith by the Borrower);

(d) (i) pursuant to any agreement or instrument that restricts in a customary manner the assignment or transfer thereof, or the subletting, assignment or transfer of any property or asset subject thereto, (ii) by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Borrower or any

Restricted Subsidiary not otherwise prohibited by this Agreement, (iii) contained in mortgages, pledges or other security agreements securing Indebtedness or other obligations of the Borrower or a Restricted Subsidiary to the extent restricting the transfer of the property or assets subject thereto, (iv) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Borrower or any Restricted Subsidiary, (v) pursuant to Purchase Money Obligations that impose encumbrances or restrictions on the property or assets so acquired, (vi) on cash or other deposits or net worth or inventory imposed by customers or suppliers under agreements entered into in the ordinary course of business, (vii) pursuant to customary provisions contained in agreements and instruments entered into in the ordinary course of business (including but not limited to leases and licenses) or in joint venture and other similar agreements or in shareholder, partnership, limited liability company and other similar agreements in respect of non-wholly owned Restricted Subsidiaries, (viii) that arises or is agreed to in the ordinary course of business and does not detract from the value of property or assets of the Borrower or any Restricted Subsidiary in any manner material to the Borrower or such Restricted Subsidiary, or (ix) pursuant to Hedging Obligations or Bank Products Obligations;

(e) with respect to any agreement for the direct or indirect disposition of Capital Stock of any Person, property or assets, imposing restrictions with respect to such Person, Capital Stock, property or assets pending the closing of such disposition;

(f) by reason of any applicable law, rule, regulation or order, or required by any regulatory authority having jurisdiction over the Borrower or any Restricted Subsidiary or any of their businesses, including any such law, rule, regulation, order or requirement applicable in connection with such Restricted Subsidiary's status (or the status of any Subsidiary of such Restricted Subsidiary) as a Captive Insurance Subsidiary;

(g) pursuant to an agreement or instrument (i) relating to any Indebtedness permitted to be Incurred subsequent to the Closing Date pursuant to Subsection 8.1 (x) if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than the encumbrances and restrictions contained in the Initial Agreements (as determined in good faith by the Borrower), or (y) if such encumbrance or restriction is not materially more disadvantageous to the Lenders than is customary in comparable financings (as determined in good faith by the Borrower) and either (1) the Borrower determines in good faith that such encumbrance or restriction will not materially affect the Borrower's ability to create and maintain the Liens on the Collateral pursuant to the Security Documents and make principal or interest payments on the Term Loans or (2) such encumbrance or restriction applies only if a default occurs in respect of a payment or financial covenant relating to such Indebtedness or (ii) relating to any sale of receivables by or Indebtedness of a Foreign Subsidiary;

(h) any agreement relating to intercreditor arrangements and related rights and obligations, to or by which the Lenders and/or the Administrative Agent, the Collateral Agent or any other agent, trustee or representative on their behalf may be party or bound at any time or from time to time, and any agreement providing that in the event that a

Lien is granted for the benefit of the Lenders another Person shall also receive a Lien, which Lien is permitted by Subsection 8.6; or

(i) any agreement governing or relating to Indebtedness and/or other obligations and liabilities secured by a Lien permitted by Subsection 8.6 (in which case any restriction shall only be effective against the assets subject to such Lien, except as may be otherwise permitted under this Subsection 8.3).

8.4 Limitation on Sales of Assets and Subsidiary Stock. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, make any Asset Disposition unless:

(i) the Borrower or such Restricted Subsidiary receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at the time of such Asset Disposition at least equal to the fair market value of the shares and assets subject to such Asset Disposition, as such fair market value may be determined (and shall be determined, to the extent such Asset Disposition or any series of related Asset Dispositions involves aggregate consideration in excess of $5,000,000) in good faith by the Borrower, whose determination shall be conclusive (including as to the value of all noncash consideration);

(ii) in the case of any Asset Disposition (or series of related Asset Dispositions) having a fair market value of $5,000,000 or more, at least 75.0% of the consideration therefor (excluding, in the case of an Asset Disposition (or series of related Asset Dispositions), any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, that are not Indebtedness) received by the Borrower or such Restricted Subsidiary is in the form of cash; and

(iii) to the extent required by Subsection 8.4(b), an amount equal to 100.0% of the Net Available Cash from such Asset Disposition is applied by the Borrower (or any Restricted Subsidiary, as the case may be) as provided therein.

(b) In the event that on or after the Closing Date the Borrower or any Restricted Subsidiary shall make an Asset Disposition or a Recovery Event shall occur, in each case in respect of Term Priority Collateral (or, if the extensions of credit under the ABL Credit Agreement have been paid in full, in respect of all Collateral), an amount equal to 100.0% of the Net Available Cash from such Asset Disposition or Recovery Event shall be applied by the Borrower (or any Restricted Subsidiary, as the case may be) as follows:

(i) first, either (x) if the Borrower or such Restricted Subsidiary elects, to the extent such Asset Disposition or Recovery Event is an Asset Disposition or Recovery Event of assets that constitute ABL Priority Collateral, to purchase, redeem, repay or prepay, to the extent the Borrower or any Restricted Subsidiary is required by the terms thereof, Indebtedness under the ABL Facility or (in the case of letters of credit, bankers' acceptances or other similar instruments issued thereunder) cash collateralize any such Indebtedness within the time period required by such Indebtedness after the later of the date of such Asset Disposition or Recovery Event, as the case may be, and the date of

receipt of such Net Available Cash or (y) so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) the Borrower shall have given the Administrative Agent prior written notice of the Borrower's intention to apply such Net Available Cash to the costs of replacement of the properties or assets that are the subject of such Asset Disposition or Recovery Event or the cost of purchase or construction of other assets useful in the business of the Borrower or its Subsidiaries, and (C) the Net Available Cash is held in a Deposit Account in which ABL Agent or the Collateral Agent has a perfected first-priority security interest, to the extent the Borrower or such Restricted Subsidiary elects (by delivery of an officer's certificate by a Responsible Officer to the Administrative Agent) to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary with an amount equal to Net Available Cash received by the Borrower or another Restricted Subsidiary) within 270 days after the later of the date of such Asset Disposition or Recovery Event, as the case may be, and the date of receipt of such Net Available Cash (such period the "Reinvestment Period"), and to the extent that such applicable Reinvestment Period shall have expired without such investment being made or completed, to pay any amounts remaining in the cash collateral account to the Administrative Agent and applied in accordance with this Section 8.4(b) and Section 4.4(d); provided that the Borrower and its Subsidiaries shall not have the right to use such Net Available Cash to make such investments in excess of $500,000 in any given fiscal year without the prior written consent of the Administrative Agent;

(ii) second, (1) if no application of Net Available Cash election is made pursuant to preceding clause (i) with respect to such Asset Disposition or Recovery Event or (2) if such election is made to the extent of the balance of such Net Available Cash or equivalent amount after application in accordance with Subsection 8.4(b)(i), (x) to the extent such Asset Disposition or Recovery Event is an Asset Disposition or Recovery Event of assets that constitute Collateral, to purchase, redeem, repay or prepay, in accordance with Subsection 4.4(c)(i) (subject to Subsection 4.4(e)) or the agreements or instruments governing the relevant Indebtedness described in clause (B) below, as applicable, (A) the Term Loans and (B) to the extent the Borrower or any Restricted Subsidiary is required by the terms thereof, Additional Obligations and any Refinancing Indebtedness in respect thereof with, in each case, a Lien on the Collateral ranking pari passu with the Liens securing the Term Loan Facility Obligations on a pro rata basis with the Term Loans and (y) to the extent such Asset Disposition is an Asset Disposition of assets that do not constitute Collateral, to purchase, redeem, repay or prepay, in accordance with Subsection 4.4(c)(i) (subject to Subsection 4.4(e)) or the agreements or instruments governing any relevant Indebtedness permitted under Subsection 8.1, as applicable, (A) the Term Loans and (B) to the extent the Borrower or any Restricted Subsidiary is required by the terms thereof, any other Indebtedness (other than Indebtedness subordinated in right of payment to the Term Loan Facility Obligations) on a pro rata basis with the Term Loans; and

(iii) third, to the extent of the balance of such Net Available Cash or equivalent amount after application in accordance with Subsections 8.4(b)(i) and (ii) above, to fund (to the extent consistent with any other applicable provision of this Agreement) any

general corporate purpose (including but not limited to the repurchase, repayment or other acquisition or retirement of Junior Debt);

provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (ii) above, the Borrower or such Restricted Subsidiary will retire such Indebtedness and will cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased.

(c) Notwithstanding the foregoing provisions of this Subsection 8.4, the Borrower and the Restricted Subsidiaries shall not be required to apply any Net Available Cash or equivalent amount in accordance with this Subsection 8.4 except to the extent that (x) the aggregate Net Available Cash from all Asset Dispositions and Recovery Events in respect of Collateral or equivalent amount that is not applied in accordance with this Subsection 8.4 exceeds $7,500,000, in which case the Borrower and its Restricted Subsidiaries shall apply all such Net Available Cash from such Asset Dispositions and Recovery Events or equivalent amount in accordance with Subsection 8.4(b) or (y) the terms of Additional Obligations or any Refinancing Indebtedness in respect thereof with, in each case, a Lien on the Collateral ranking pari passu with the Liens securing the Term Loan Facility Obligations would require Net Available Cash from such Asset Sales and Recovery Events or the equivalent amount to be applied to purchase, redeem, repay or prepay such Indebtedness prior to reaching such $7,500,000 threshold.

(d) For the purposes of Subsection 8.4(a)(ii), the following are deemed to be cash: (1) Temporary Cash Investments and Cash Equivalents, (2) the assumption of Indebtedness of the Borrower (other than Disqualified Stock of the Borrower) or any Restricted Subsidiary and the release of the Borrower or such Restricted Subsidiary from all liability on payment of the principal amount of such Indebtedness in connection with such Asset Disposition, (3) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Borrower and each other Restricted Subsidiary are released from any Guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Disposition, (4) securities received by the Borrower or any Restricted Subsidiary from the transferee that are converted by the Borrower or such Restricted Subsidiary into cash within 180 days, (5) consideration consisting of Indebtedness of the Borrower or any Restricted Subsidiary, (6) Additional Assets, and (7) any Designated Noncash Consideration received by the Borrower or any of its Restricted Subsidiaries in an Asset Disposition having an aggregate Fair Market Value, taken together with all other Designated Noncash Consideration received pursuant to this clause (7), not to exceed an aggregate amount at any time outstanding equal to $5,000,000 (with the Fair Market Value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value).

8.5 Limitations on Transactions with Affiliates. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower (an "Affiliate Transaction") involving aggregate consideration in excess of $5,000,000 unless (i) the terms of such Affiliate Transaction are not materially less favorable to the Borrower or such Restricted

Subsidiary, as the case may be, than those that could be obtained at the time in a transaction with a Person who is not such an Affiliate and (ii) if such Affiliate Transaction involves aggregate consideration in excess of $15,000,000, the terms of such Affiliate Transaction have been approved by a majority of the Board of Directors. For purposes of this Subsection 8.5(a), any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in this Subsection 8.5(a) if (x) such Affiliate Transaction is approved by a majority of the Disinterested Directors or (y) in the event there are no Disinterested Directors, a fairness opinion is provided by a nationally recognized appraisal or investment banking firm with respect to such Affiliate Transaction.

(b) The provisions of Subsection 8.5(a) will not apply to:

(i) any Restricted Payment Transaction,

(ii) (1) the entering into, maintaining or performance of any employment or consulting contract, collective bargaining agreement, benefit plan, program or arrangement, related trust agreement or any other similar arrangement for or with any current or former employee, officer or director or consultant of or to the Borrower, any Restricted Subsidiary or any Parent Entity heretofore or hereafter entered into in the ordinary course of business, including vacation, health, insurance, deferred compensation, severance, retirement, savings or other similar plans, programs or arrangements, (2) payments, compensation, performance of indemnification or contribution obligations, or the making or cancellation of loans in the ordinary course of business to any such employees, officers, directors or consultants, (3) any issuance, grant or award of stock, options, other equity related interests or other equity securities, to any such employees, officers, directors or consultants, (4) the payment of reasonable fees to directors of the Borrower or any of its Subsidiaries or any Parent Entity (as determined in good faith by the Borrower, such Subsidiary or such Parent Entity), or (5) Management Advances and payments in respect thereof (or in reimbursement of any expenses referred to in the definition of such term),

(iii) any transaction between or among any of the Borrower or one or more Restricted Subsidiaries,

(iv) any transaction arising out of agreements or instruments in existence on the Closing Date and set forth on Schedule 8.5 and any payments made pursuant thereto,

(v) any transaction in the ordinary course of business on terms that are fair to the Borrower and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or senior management of the Borrower, or are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that could be obtained at the time in a transaction with a Person who is not an Affiliate of the Borrower,

(vi) any transaction in the ordinary course of business, or approved by a majority of the Board of Directors, between the Borrower or any Restricted Subsidiary and any Affiliate of the Borrower controlled by the Borrower that is a joint venture or similar entity,

(vii) the execution, delivery and performance of any Tax Sharing Agreement,

(viii) (x) the Transactions, all transactions in connection therewith (including but not limited to the financing thereof), and all fees and expenses paid or payable in connection with the Transactions and (y) the entry into the Subordinated Notes Documents and the Incurrence of Indebtedness thereunder, all transactions in connection therewith and all fees and expenses paid or payable in connection with the Transactions,

(ix) any issuance or sale of Capital Stock (other than Disqualified Stock) of the Borrower or any capital contribution to the Borrower, and

(x) any transaction arising out of the Subordinated Notes Documents, or any amendments or modifications thereto, and any payments made pursuant thereto.

8.6 Limitation on Liens. The Borrower shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or permit to exist any Lien (other than Permitted Liens) on any of its property or assets (including Capital Stock of any other Person), whether owned on the Closing Date or thereafter acquired, securing any Indebtedness (the "Initial Lien") unless, in the case of Initial Liens on any asset or property other than Collateral, the Term Loan Facility Obligations are equally and ratably secured with (or on a senior basis to, in the case such Initial Lien secures any Junior Debt) the obligations secured by such Initial Lien for so long as such obligations are so secured. Any such Lien created in favor of the Term Loan Facility Obligations pursuant to the subclause in the preceding sentence requiring an equal and ratable (or senior, as applicable) Lien for the benefit of the Term Loan Facility Obligations will be automatically and unconditionally released and discharged upon (i) the release and discharge of the Initial Lien to which it relates, (ii) in the case of any such Lien in favor of any Subsidiary Guaranty, upon the termination and discharge of such Subsidiary Guaranty in accordance with the terms thereof, hereof and of the ABL/Term Loan Intercreditor Agreement, any Junior Intercreditor Agreement and any Other Intercreditor Agreement, in each case, to the extent applicable, or (iii) any sale, exchange or transfer (other than a transfer constituting a transfer of all or substantially all of the assets of the Borrower that is governed by the provisions of Subsection 8.7) to any Person not an Affiliate of the Borrower of the property or assets secured by such Initial Lien, or of all of the Capital Stock held by the Borrower or any Restricted Subsidiary in, or all or substantially all the assets of, any Restricted Subsidiary creating such Initial Lien.

8.7 Limitation on Fundamental Changes. The Borrower will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(i) the resulting, surviving or transferee Person (the "Successor Borrower") will be a Person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and the Successor Borrower (if not the Borrower) will expressly assume all the obligations of the Borrower under this Agreement and the Loan Documents to which it is a party by executing and delivering to the Administrative Agent a joinder or one or more other documents or instruments in form reasonably satisfactory to the Administrative Agent;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Borrower or any Restricted Subsidiary as a result of such transaction as having been Incurred by the Successor Borrower or such Restricted Subsidiary at the time of such transaction), no Default will have occurred and be continuing;

(iii) immediately after giving effect to such transaction, either (A) the Borrower (or, if applicable, the Successor Borrower with respect thereto) could Incur at least $1.00 of additional Indebtedness pursuant to Subsection 8.1(a) or (B) the Consolidated Coverage Ratio of the Borrower (or, if applicable, the Successor Borrower with respect thereto) would equal or exceed the Consolidated Coverage Ratio of the Borrower immediately prior to giving effect to such transaction;

(iv) each Subsidiary Guarantor (other than (x) any Subsidiary Guarantor that will be released from its obligations under its Subsidiary Guaranty in connection with such transaction and (y) any party to any such consolidation or merger) shall have delivered a joinder or other document or instrument in form reasonably satisfactory to the Administrative Agent, confirming its Subsidiary Guaranty (other than any Subsidiary Guaranty that will be discharged or terminated in connection with such transaction);

(v) each Subsidiary Guarantor (other than (x) any Subsidiary that will be released from its grant or pledge of Collateral under the Guarantee and Collateral Agreement in connection with such transaction and (y) any party to any such consolidation or merger) shall have by a supplement to the Guarantee and Collateral Agreement or another document or instrument affirmed that its obligations thereunder shall apply to its Guarantee as reaffirmed pursuant to clause (iv) above;

(vi) each mortgagor of a Mortgaged Fee Property (other than (x) any Subsidiary that will be released from its grant or pledge of Collateral under the Guarantee and Collateral Agreement in connection with such transaction and (y) any party to any such consolidation or merger) shall have affirmed that its obligations under the applicable Mortgage shall apply to its Guarantee as reaffirmed pursuant to clause (iv); and

(vii) the Borrower will have delivered to the Administrative Agent a certificate signed by a Responsible Officer and a legal opinion, each to the effect that such consolidation, merger or transfer complies with the provisions described in this Subsection 8.7(a), provided that (x) in giving such opinion such counsel may rely on such certificate of a Responsible Officer as to compliance with the foregoing clauses (ii) and (iii) of this Subsection 8.7(a) and as to any matters of fact, and (y) no such legal opinion will be required for a consolidation, merger or transfer described in Subsection 8.7(d).

(b) Any Indebtedness that becomes an obligation of the Borrower, any Successor Borrower or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this Subsection 8.7, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with Subsection 8.1.

(c) Upon any transaction involving the Borrower in accordance with Subsection 8.7(a) in which the Borrower is not the Successor Borrower, the Successor Borrower will succeed to, and be substituted for, and may exercise every right and power of, the Borrower under the Loan Documents, and thereafter the predecessor Borrower shall be relieved of all obligations and covenants under the Loan Documents, except that the predecessor Borrower in the case of a lease of all or substantially all its assets will not be released from the obligation to pay the principal of and interest on the Term Loans.

(d) Clauses (ii) and (iii) of Subsection 8.7(a) will not apply to any transaction in which the Borrower consolidates or merges with or into or transfers all or substantially all its properties and assets to (x) an Affiliate incorporated or organized for the purpose of reincorporating or reorganizing the Borrower in another jurisdiction or changing its legal structure to a corporation or other entity or (y) a Restricted Subsidiary of the Borrower so long as all assets of the Borrower and the Restricted Subsidiaries immediately prior to such transaction (other than Capital Stock of such Restricted Subsidiary) are owned by such Restricted Subsidiary and its Restricted Subsidiaries immediately after the consummation thereof. Subsection 8.7(a) will not apply to any transaction in which any Restricted Subsidiary consolidates with, merges into or transfers all or part of its assets to the Borrower.

Any Successor Borrower, if not the Borrower, will provide the information contemplated by Subsection 11.18 to any Lender upon request therefor.

8.8 Change of Control; Limitation on Amendments; Tax Restructuring Agreements; Trade Payable Restructuring Agreements. The Borrower shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(a) In the event of the occurrence of a Change of Control, repurchase or repay any Indebtedness then outstanding pursuant to any Junior Debt or any portion thereof, unless the Borrower shall have (i) made payment in full of the Term Loans and any other amounts then due and owing to any Lender or either Agent hereunder and under any Note or (ii) made an offer to pay the Term Loans and any amounts then due and owing to each Lender and each Agent hereunder and under any Note and shall have made payment in full thereof to each such Lender or such Agent which has accepted such offer.

(b) Amend, supplement, waive or otherwise modify the terms of any Additional Obligations or any Refinancing Indebtedness in respect of the foregoing or any indenture or agreement pursuant to which such Additional Obligations or Refinancing Indebtedness have been issued or incurred in any manner inconsistent with the requirements of the definition of "Refinancing Indebtedness", assuming for purposes of this Subsection 8.8(b) that such amendment, supplement, waiver or modification, mutatis mutandis, is a refinancing of such Additional Obligations or Refinancing Indebtedness, as applicable.

(c) Directly or indirectly, amend, modify, or change any of the terms or provisions of any agreement, instrument, document, indenture, or other writing evidencing or concerning Indebtedness permitted by Subsection 8.1 (including, without limitation, (x) the ABL Indebtedness, if the effect of such amendment, modification or extension is to (1) increase the commitments thereunder or the rate of interest payable thereon (except in connection with the

imposition of a default rate of interest in accordance with the terms of the ABL Credit Agreement), (2) change the dates upon which payments of principal or interest on the ABL Indebtedness are due, (3) change the dates upon which payments of principal or interest on the ABL Indebtedness are due, (3) change or add any event of default or any covenant with respect to the ABL Indebtedness or (4) change or amend any other term of the ABL Facility Documents if such change or amendment would result in a Default or Event of Default hereunder, would increase the obligations of any Loan Party, or could otherwise, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders and (y) the Subordinated Notes, except any amendment, modification or extension the sole purpose of which is to extend the maturity date of the Subordinated Notes and which does not increase the principal amount of the Subordinated Notes or the interest payable thereon and which amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders) other than (A) the Obligations in accordance with this Agreement and (B) Indebtedness permitted under Subsection 8.1 (other than ABL Indebtedness and the Subordinated Notes) to the extent that any such amendment, modification, or change could not, individually or in the aggregate, reasonably be expected to be materially adverse to the interests of the Lenders.

(d) Fail to be in compliance with the terms of any of the Tax Restructuring Agreements or the Trade Payable Restructuring Agreements if such noncompliance would permit the holder of the Funded Debt thereunder to accelerate the maturity of such Funded Debt (whether or not the holder accelerates the maturity of such Funded Debt as a result of such noncompliance).

8.9 Limitation on Lines of Business; Limitations on New Holdings. (a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any business, either directly or through any Restricted Subsidiary, except for those businesses of the same general type as those in which the Borrower and its Restricted Subsidiaries are engaged in on the Closing Date or which are reasonably related thereto. (b) New Holdings shall not engage in any business activities or own any property or other assets other than (i) ownership of the Capital Stock of the Borrower, (ii) activities and contractual rights incidental to maintenance of its corporate existence, (iii) performance of its obligations hereunder and under the other Loan Documents and (v) performance of its obligations under the ABL Facility Documents and the Subordinated Notes Documents.

8.10 Sanctions; Anti-Corruption Laws. The Borrower will not, and will not permit any Subsidiary or other Person to, use any the proceeds of any Loan, or lend, contribute or otherwise make available any Loan or the proceeds of any Loan, to any Sanctioned Person, to fund any activities of or business with any Sanctioned Person or in any Sanctioned Country, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as an Agent, a Lender or otherwise) of any Sanctions. The Borrower will not, and will not permit any Subsidiary or other Person to, use any Loan or the proceeds therefrom for any purpose that would violate the Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and any similar anti-corruption legislation or laws in any other jurisdiction.

SECTION 9

Events of Default

9.1 Events of Default. Any of the following from and after the Closing Date shall constitute an event of default:

(a) The Borrower shall fail to pay any principal of any Term Loan when due in accordance with the terms hereof (whether at stated maturity, by mandatory prepayment or otherwise); or the Borrower shall fail to pay any interest on any Term Loan, or any other amount payable hereunder, within five Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document (or in any amendment, modification or supplement hereto or thereto) or which is contained in any certificate furnished at any time by or on behalf of any Loan Party pursuant to this Agreement or any such other Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) Any Loan Party shall default in the payment, observance or performance of any term, covenant or agreement contained in Section 8; or

(d) Any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in clauses (a) through (c) of this Subsection 9.1), and such default shall continue unremedied for a period of 30 days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

(e) (i) An "Event of Default" as defined in the ABL Facility Documents shall exist, (ii) an "Event of Default" as defined in the Subordinated Notes Documents shall exist or (iii) any Loan Party or any of its Restricted Subsidiaries shall default in (x) any payment of principal of or interest on (A) any Indebtedness (excluding the Term Loans) involving an aggregate amount in excess of $[10,000,000] or (B) any Guarantee Obligation involving an aggregate amount in excess of $[10,000,000], in each case beyond the period of grace, if any, provided in the instrument or agreement under which such Indebtedness or Guarantee Obligation was created or (y) the observance or performance of any other agreement or condition relating to any Indebtedness (excluding the Term Loans) or Guarantee Obligation referred to in clause (x) above or contained in any instrument or agreement evidencing, securing or relating thereto (other than a failure to provide notice of a default or an event of default under such instrument or agreement or default in the observance of or compliance with any financial maintenance covenant to the extent cured within 45 days of such default or event of default), or any other event shall occur or condition exist, the effect of which default or other event or condition is to cause, or to permit the holder or holders of such Indebtedness or beneficiary or

beneficiaries of such Guarantee Obligation (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, with the giving of notice or lapse of time if required, such Indebtedness to become due prior to its stated maturity or such Guarantee Obligation to become payable (an "Acceleration"), and such time shall have lapsed and, if any notice (a "Default Notice") shall be required to commence a grace period or declare the occurrence of an event of default before notice of Acceleration may be delivered, such Default Notice shall have been given and such default shall not have been remedied or waived by or on behalf of such holder or holders; or

(f) If (i) the Borrower or any Material Subsidiaries of the Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts (excluding, in each case, the solvent liquidation or reorganization of any Foreign Subsidiary of the Borrower that is not a Loan Party), or (B) seeking appointment of a receiver, interim receiver, receivers, receiver and manager, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Material Subsidiaries of the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower or any Material Subsidiaries of the Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged, unstayed or unbonded for a period of 60 days; or (iii) there shall be commenced against the Borrower or any Material Subsidiaries of the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Borrower or any Material Subsidiaries of the Borrower shall take any corporate or other similar organizational action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any Material Subsidiaries of the Borrower shall be generally unable to, or shall admit in writing its general inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any failure to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of either of the Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is in the reasonable opinion of the Administrative Agent likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV

of ERISA other than a standard termination pursuant to Section 4041(b) of ERISA, (v) either of the Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Administrative Agent is reasonably likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan, or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could be reasonably expected to result in a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against the Borrower or any of its Restricted Subsidiaries involving in the aggregate at any time a liability (net of any insurance or indemnity payments actually received in respect thereof prior to or within 60 days from the entry thereof, or to be received in respect thereof in the event any appeal thereof shall be unsuccessful) of $10,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) (i) Any of the Security Documents shall cease for any reason to be in full force and effect (other than pursuant to the terms hereof or thereof), or any Loan Party which is a party to any such Security Document shall so assert in writing or (ii) the Lien created by any of the Security Documents shall cease to be perfected and enforceable in accordance with its terms or of the same effect as to perfection and priority purported to be created thereby with respect to any significant portion of the Collateral (other than in connection with any termination of such Lien in respect of any Collateral as permitted hereby or by any Security Document) and such failure of such Lien to be perfected and enforceable with such priority shall have continued unremedied for a period of 20 days; or

(j) Any Loan Party shall assert in writing that any of the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement (after execution and delivery thereof) shall have ceased for any reason to be in full force and effect (other than pursuant to the terms hereof or thereof) or shall knowingly contest, or knowingly support any other Person in any action that seeks to contest, the validity or effectiveness of any such intercreditor agreement (other than pursuant to the terms hereof or thereof); or

(k) A Change of Control shall have occurred.

9.2 Remedies Upon an Event of Default. (a) If any Event of Default occurs and is continuing, then the Agents may exercise any and all rights and remedies available to the Agents under the Loan Documents and applicable Requirement of Law, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of Subsection 9.1(f) with respect to the Borrower, automatically the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement shall immediately become due and payable, and (B) if such event is any other Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Term Loans hereunder (with accrued interest

thereon) and all other amounts owing under this Agreement to be due and payable forthwith, whereupon the same shall immediately become due and payable.

(b) Except as expressly provided above in this Section 9, to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

SECTION 10

Agency Provisions

10.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Cortland 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 Section are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Bank Products Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Term Loan Facility Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Subsection 10.5 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 Section 10 and Section 11 (including Subsection 10.7(a), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

10.2 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 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.

10.3 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) 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 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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) 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 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.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Subsections 11.1 and 9.2) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the value or the sufficiency of any Collateral or (vi) the

satisfaction of any condition set forth in Section 6 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.4 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 Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 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 Section 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right 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 and shall (unless an Event of Default under Section 9.1(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been

appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (iv) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as Administrative Agent and appoint a successor, subject, unless an Event of Default under Section 9.1(f) with respect to the Borrower shall have occurred and be continuing, to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative 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 the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Subsection 4.13(f) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative 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). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Section and Subsection 11.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

10.7 Indemnity; Reimbursement by Lenders. (a) To the extent that the Borrower or any other Loan Party for any reason fails to indefeasibly pay any amount required under Subsection 11.5 to be paid by it to the Administrative Agent (or any sub-agent thereof) or the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay ratably according to their respective outstanding Term Loans on the date on which the applicable unreimbursed expense or indemnity payment is sought under this Subsection 10.7 such unpaid amount (such indemnity shall be effective whether or not the

related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); 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 any such sub-agent) or the Collateral Agent (or any sub-agent thereof) or against any Related Party of any of the foregoing acting for the Administrative Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this Subsection 10.7 are subject to the provisions of Subsection 4.8.

(b) Any Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document (except actions expressly required to be taken by it hereunder or under the Loan Documents) unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

(c) All amounts due under this Subsection 10.7 shall be payable not later than three Business Days after demand therefor. The agreements in this Subsection 10.7 shall survive the payment of the Loans and all other amounts payable hereunder.

10.8 Collateral Matters. (a) Each Lender authorizes and directs the Administrative Agent and the Collateral Agent to enter into (x) the Security Documents, the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement and any Other Intercreditor Agreement for the benefit of the Lenders and the other Secured Parties, (y) any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to the Security Documents, the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, Junior Lien Intercreditor and any Other Intercreditor Agreement or other intercreditor agreements in connection with the incurrence by any Loan Party or any Subsidiary thereof of Additional Indebtedness (each an "Intercreditor Agreement Supplement") to permit such Additional Indebtedness to be secured by a valid, perfected lien (with such priority as may be designated by the Borrower or relevant Subsidiary, to the extent such priority is permitted by the Loan Documents) and (z) any Incremental Commitment Amendment as provided in Subsection 2.6 any Increase Supplement as provided in Subsection 2.6, any Lender Joinder Agreement as provided in Subsection 2.6 and any Extension Amendment as provided in Subsection 2.8. Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Administrative Agent, the Collateral Agent or the Required Lenders in accordance with the provisions of this Agreement, the Security Documents, the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Other Intercreditor Agreement, any Intercreditor Agreement Supplement, any Incremental Commitment Amendment, any Increase Supplement, any Lender Joinder Agreement or any Extension Amendment and the exercise by the Agents or the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (i) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to this Agreement and the other Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the

ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement and any Other Intercreditor Agreement, (b) in the event of any conflict between the terms and provisions of this Agreement or any other Loan Document, on the one hand, and the terms and provisions of the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement, on the other hand, the terms and provisions of the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or Other Intercreditor Agreement, as applicable, shall control and (c) each Lender agrees to be bound by the terms of the ABL/Term Loan Intercreditor Agreement, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Other Intercreditor Agreement, any Intercreditor Agreement Supplement and any Incremental Commitment Amendment. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any applicable Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Term Loans unless instructed to do so by the Collateral Agent, it being understood and agreed that such rights and remedies may be exercised only by the Collateral Agent. The Collateral Agent may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any guarantee by any Subsidiary (including extensions beyond the Closing Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Closing Date) where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Security Documents.

(b) The Lenders hereby authorize each Agent, in each case at its option and in its discretion, (A) to release any Lien granted to or held by such Agent upon any Collateral (i) upon termination of the Initial Term Loan Commitments and payment and satisfaction of all of the Term Loan Facility Obligations under the Loan Documents at any time arising under or in respect of this Agreement or the Loan Documents or the transactions contemplated hereby or thereby that are then due and unpaid, (ii) constituting property being sold or otherwise disposed of (to Persons other than a Loan Party) upon the sale or other disposition thereof, (iii) owned by any Subsidiary Guarantor designated as an Excluded Subsidiary or constituting Capital Stock of an Unrestricted Subsidiary, (iv) if approved, authorized or ratified in writing by the Required Lenders (or such greater amount, to the extent required by Subsection 11.1) or (v) as otherwise may be expressly provided in the relevant Security Documents and (B) to subordinate any Lien on any Excluded Assets or any other property granted to or held by such Agent, as the case may be under any Loan Document to the holder of any Permitted Lien described in clause (c), (d), (e), (f), [(h)], (j), (l) or (p) (other than clause (6) thereof) or clause (o) (with respect to such Liens described in clause [(h)] or (l)) of the definition thereof. Upon request by any Agent, at any time, the Lenders will confirm in writing any Agent's authority to release particular types or items of Collateral pursuant to this Subsection 10.8.

(c) The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as the case may be, in each case at its option and in its discretion, to enter into any

amendment, amendment and restatement, restatement, waiver, supplement or modification, and to make or consent to any filings or to take any other actions, in each case as contemplated by Subsection 11.17. Upon request by any Agent, at any time, the Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority under this Subsection 10.8(c).

(d) No Agent shall have any obligation whatsoever to the Lenders to assure that the Collateral exists or is owned by the Borrower or any of its Restricted Subsidiaries or is cared for, protected or insured or that the Liens granted to any Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Agents in this Subsection 10.8 or in any of the Security Documents, it being understood and agreed by the Lenders that in respect of the Collateral, or any act, omission or event related thereto, each Agent may act in any manner it may deem appropriate, in its sole discretion, given such Agent's own interest in the Collateral as a Lender and that no Agent shall have any duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct.

(e) Notwithstanding any provision herein to the contrary, any Security Document may be amended (or amended and restated), restated, waived, supplemented or modified as contemplated by and in accordance with either Subsection 11.1 or 11.17, as applicable, with the written consent of the Agent party thereto and the Loan Party party thereto.

(f) The Collateral Agent may, and hereby does, appoint the Administrative Agent as its agent for the purposes of holding any Collateral and/or perfecting the Collateral Agent's security interest therein and for the purpose of taking such other action with respect to the collateral as such Agents may from time to time agree.

10.9 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information 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.

10.10 [Reserved.]

10.11 Taxes. Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Non-Excluded Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Non-Excluded Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent against any Taxes attributable to such Lender's failure to comply with the provisions of Subsection 11.6(b)(vi) relating to the maintenance of a Participant Register and (z) the

Administrative Agent against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Subsection 10.11.

10.12 Administrative Agent May File Proofs of Claim. 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 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 Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Term Loan Facility Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Subsections 4.5 and 11.5) allowed in such judicial proceeding; and

(ii) 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, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, 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 Subsections 4.5 and 11.5.

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 any plan of reorganization, arrangement, adjustment or composition affecting the Term Loan Facility Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

10.13 Application of Proceeds. The Lenders, the Administrative Agent and the Collateral Agent agree, as among such parties, as follows: subject to the terms of the ABL/Term Loan Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Other Intercreditor Agreement or any Intercreditor Agreement Supplement, after the occurrence and during the

continuance of an Event of Default, all amounts collected or received by the Administrative Agent, the Collateral Agent or any Lender on account of amounts then due and outstanding under any of the Loan Documents shall, except as otherwise expressly provided herein, be applied as follows: first, to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees to the extent provided herein) due and owing hereunder of the Administrative Agent and the Collateral Agent in connection with enforcing the rights of the Agents and the Lenders under the Loan Documents (including all expenses of sale or other realization of or in respect of the Collateral and any sums advanced to the Collateral Agent or to preserve its security interest in the Collateral), second, to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees to the extent provided herein) due and owing hereunder of each of the Lenders in connection with enforcing such Lender's rights under the Loan Documents, third, to pay interest on Loans then outstanding; fourth, to pay principal of Loans then outstanding and obligations under Interest Rate Agreements, Currency Agreements, Commodity Agreements and Bank Product Agreements permitted hereunder and secured by the Guarantee and Collateral Agreement, ratably among the applicable Secured Parties in proportion to the respective amounts described in this clause "fourth" payable to them, and fifth, to pay the surplus, if any, to whomever may be lawfully entitled to receive such surplus. To the extent any amounts available for distribution pursuant to clause "third" or "fourth" above are insufficient to pay all obligations described therein in full, such moneys shall be allocated pro rata among the applicable Secured Parties in proportion to the respective amounts described in the applicable clause at such time. This Subsection 10.13 may be amended (and the Lenders hereby irrevocably authorize the Administrative Agent to enter into any such amendment) to the extent necessary to reflect differing amounts payable, and priorities of payments, to Lenders participating in any new classes or tranches of loans added pursuant to Subsections 2.6 and 2.8, as applicable.

SECTION 11

Miscellaneous

11.1 Amendments and Waivers. (a) Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof, may be amended, restated, supplemented, modified or waived except in accordance with the provisions of this Subsection 11.1. The Required Lenders may (together with notice to the Administrative Agent, which notice shall be a condition to effectiveness to such amendment or waiver), or, with the written consent of the Required Lenders, the Administrative Agent may, from time to time, (x) enter into with the respective Loan Parties hereto or thereto, as the case may be, written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or to the other Loan Documents or changing, in any manner the rights or obligations of the Lenders or the Loan Parties hereunder or thereunder, or (y) waive at any Loan Party's request, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that amendments pursuant to Subsections 11.1(d) may be effected without the consent of the Required Lenders to the extent provided therein; provided further, that no such waiver and no such amendment, supplement or modification shall:

(i) (A) reduce or forgive the amount or extend the scheduled date of maturity of any Loan or of any scheduled installment thereof (including extending the Maturity Date) without the written consent of each Lender directly affected thereby, (B) reduce the stated rate of any interest, commission or fee payable hereunder (other than as a result of any waiver of the applicability of any post-default increase in interest rates) without the written consent of each Lender directly affected thereby, (C) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby or (D) increase or extend any Lender's Initial Term Loan Commitment or Incremental Commitment 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 repayment of the Loans of all Lenders shall not constitute an extension of the scheduled date of maturity, any scheduled installment, or the scheduled date of payment of the Loans of any Lender or an increase in the Initial Term Loan Commitment or Incremental Commitment of any Lender);

(ii) amend, modify or waive any provision of this Subsection 11.1(a) or reduce the percentage specified in the definition of "Required Lenders," or consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents (other than pursuant to Subsection 8.7 or 11.6(a)), in each case without the written consent of all the Lenders;

(iii) release Guarantors accounting for all or substantially all of the value of the Guarantee of the Obligations pursuant to the Guarantee and Collateral Agreement, or, in the aggregate (in a single transaction or a series of related transactions), all or substantially all of the Collateral without the consent of all of the Lenders, except as expressly permitted hereby or by any Security Document (as such documents are in effect on the date hereof or, if later, the date of execution and delivery thereof in accordance with the terms hereof);

(iv) require any Lender to make Loans having an Interest Period of longer than six (6) months or shorter than one month without the consent of such Lender;

(v) amend, modify or waive any provision of Section 10 without the written consent of the Agents;

(vi) waive any condition set forth in Subsection 6.1 without the written consent of each Lender, except to the extent otherwise provided for therein; or

(vii) amend, modify or waive the order of application of payments set forth in Subsection 4.4(d), 4.8(a), 10.13 or 11.7, in each case without the consent of all the Lenders.

(b) Any waiver and any amendment, supplement or modification pursuant to this Subsection 11.1 shall apply to each of the Lenders and shall be binding upon the Loan

Parties, the Lenders, the Agents and all future holders of the Loans. In the case of any waiver, each of the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(c) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(d) Notwithstanding any provision herein to the contrary, this Agreement and the other Loan Documents may be amended (i) to cure any ambiguity, mistake, omission, typographical error, defect, or inconsistency with the consent of the Borrower and the Administrative Agent, (ii) in accordance with Subsection 2.6 to incorporate the terms of any Incremental Commitments with the written consent of the Borrower and Lenders providing such Incremental Commitments, (iii) in accordance with Subsection 2.8 to effectuate an Extension with the written consent of the Borrower and the Extending Lenders, (iv) in accordance with Subsection 7.12, to change the financial reporting convention and (v) with the consent of the Borrower and the Administrative Agent (in each case such consent not to be unreasonably withheld or delayed), in the event any mandatory prepayment or redemption provision in respect of asset sales, casualty, condemnation events or excess cash flow included or to be included in any Indebtedness constituting Additional Obligations or that would constitute Additional Obligations would result in such Indebtedness being prepaid or redeemed on a more than ratable basis with the Term Loans in respect of such asset sale, casualty or condemnation event or excess cash flow prepayment, to provide for mandatory prepayments of the Term Loans such that, after giving effect thereto, the prepayments and redemptions made in respect of such Indebtedness are not on more than a ratable basis. Without limiting the generality of the foregoing, any provision of this Agreement and the other Loan Documents, including Subsection 4.4, 4.8 or 10.13 hereof, may be amended as set forth in the immediately preceding sentence pursuant to any Incremental Commitment Amendment or any Extension Amendment, as the case may be, to provide for non-pro rata Borrowings and payments of any amounts hereunder as between any Tranches, including the Term Loans and any Incremental Commitments or Incremental Loans and any Extended Term Tranche, or to provide for the inclusion, as appropriate, of the Lenders of any Extended Term Tranche or Incremental Commitments or Incremental Loans in any required vote or action of the Required Lenders or of the Lenders of each Tranche hereunder. The Administrative Agent hereby agrees (if requested by the Borrower) to execute any amendment referred to in this clause (d) or an acknowledgement thereof.

(e) Notwithstanding any provision herein to the contrary, this Agreement may be amended (or deemed amended) or amended and restated with the written consent of the

Required Lenders, the Administrative Agent and the Borrower (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the existing Facilities and the accrued interest and fees in respect thereof, (y) to include, as appropriate, the Lenders holding such credit facilities in any required vote or action of the Required Lenders or of the Lenders of each Facility hereunder and (z) to provide class protection for any additional credit facilities.

(f) Notwithstanding any provision herein to the contrary, any Security Document may be amended (or amended and restated), restated, waived, supplemented or modified as contemplated by Subsection 11.17 with the written consent of the Agent party thereto and the Loan Party party thereto.

(g) If, in connection with any proposed change, waiver, discharge or termination of or to any of the provisions of this Agreement and/or any other Loan Document as contemplated by Subsection 11.1(a), the consent of each Lender or each affected Lender, as applicable, is required and the consent of the Required Lenders at such time is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (each such Lender, a "Non-Consenting Lender") then the Borrower may, on notice to the Administrative Agent and the Non-Consenting Lender, (A) replace such Non-Consenting Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Subsection 11.6 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to the applicable change, waiver, discharge or termination of this Agreement and/or the other Loan Documents; and provided, further, that all obligations of the Borrower owing to the Non-Consenting Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such Non-Consenting Lender concurrently with such Assignment and Acceptance or (B) so long as no Event of Default under Subsection 9.1(a) or (f) then exists or will exist immediately after giving effect to the respective prepayment, upon notice to the Administrative Agent, prepay the Loans and, if applicable, terminate the commitments of such Non-Consenting Lender, in whole or in part, subject to Subsection 4.12, without premium or penalty. In connection with any such replacement under this Subsection 11.1(g), if the Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the replacement Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (b) the date as of which all obligations of the Borrower owing to the Non-Consenting Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Non-Consenting Lender, and the Administrative Agent shall record such assignment in the Register.

11.2 Notices. (a) All notices, requests, and demands to or upon the respective parties hereto to be effective shall be in writing (including telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or when received if mailed by certified or registered mail, or, in the case of telecopy notice, when sent, or, in the case of delivery by a nationally recognized overnight courier, when received, addressed as follows in the case of the Borrower, the Administrative Agent and the Collateral Agent, and as set forth in Schedule A in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the Loans:

The Borrower	Boomerang Tube, LLC 14567 N. Outer Forty Road, 5th Floor Chesterfield, MO 63017 Attention: General Counsel or Chief Financial Officer Facsimile: (636) 534-5657 Telephone: (636) 534-5656 and (636) 812-0478 Electronic mail: mcullen@boomerangtube.com and jason.roberts@boomerangtube.com
With copies (which shall not constitute notice) to:	Debevoise & Plimpton LLP 919 Third Avenue New York, New York 10022 Attention: My Chi To, Esq. Facsimile: (212) 521-7015 Telephone: (212) 909-6000 Electronic mail: mcto@debevoise.com
The Administrative Agent/the Collateral Agent:	*Administrative Agent's Office:* Cortland Capital Market Services LLC 225 W. Washington St., 21st Floor Chicago, Illinois 60606 Attention: Ryan Morick and Legal Department Telephone: 312-564-5072 Telecopier: 312-376-0751 Electronic Mail: ryan.morick@cortlandglobal.com and legal@cortlandglobal.com

With copies (which shall not constitute notice) to:	King & Spalding LLP 1185 Avenue of the Americas New York, New York 10036 Attention: Michael C. Rupe, Esq. Telephone: (212) 556-2135 Facsimile: (212) 556-2222 E-mail: mrupe@kslaw.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders pursuant to Subsection 4.2, 4.4 or 4.8 shall not be effective until received.

(b) Without in any way limiting the obligation of any Loan Party and its Subsidiaries to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may prior to receipt of written confirmation act without liability upon the basis of such telephonic notice, believed by the Administrative Agent in good faith to be from a Responsible Officer of a Loan Party.

(c) Loan Documents may be transmitted and/or signed by facsimile or other electronic means (i.e., a "pdf" or "tif"). The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on each Loan Party, each Agent and each Lender. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or other electronic document or signature.

(d) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including electronic mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or the 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. Unless the Administrative Agent otherwise prescribes (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website (including the Borrower's website on the Internet at the website address listed on Schedule 7.2(d) (or such other website address as the Borrower may specify by written notice to the Administrative Agent from time to time)) 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 that if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(e) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet.

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

(g) The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.3 No Waiver; Cumulative Remedies; Enforcement. No failure to exercise and no delay in exercising, on the part of any Agent, any Lender or any Loan Party, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Subsection 9.2 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Subsection 11.7 (subject to the terms of Subsection 11.7) or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Required Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Subsection 9.2 and (y) in addition to the matters set forth in clauses (iii) and (iv) of the preceding proviso and subject to Subsection 11.7, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

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

11.5 Payment of Expenses and Taxes; Indemnity. The Borrower agrees (a) to pay or reimburse the Agents and their Affiliates for (1) all their reasonable out-of-pocket costs and expenses incurred in connection with (i) the syndication of the Facilities and the development, preparation, execution and delivery of, and any amendment, supplement, waiver or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) the consummation and administration of the transactions (including the syndication of the Initial Term Loan Commitments) contemplated hereby and thereby and (iii) efforts to monitor the Loans and verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral, and (2) the reasonable fees and disbursements of King & Spalding LLP, Skadden, Arps, Slate, Meagher & Flom LLP, Agents' local counsel (if any), consultants, advisors, appraisers and auditors, (b) to pay or reimburse each Lender and the Agents and their Affiliates for all their reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement (including its rights under this Subsection 11.5), the other Loan Documents and any other documents prepared in connection herewith or therewith, or in connection with any workout, restructuring or negotiations in respect of the Loans including the reasonable fees and disbursements of counsel to the Agents and the Lenders, (c) to pay, indemnify, or reimburse each

Lender and the Agents for, and hold each Lender and the Agents harmless from, any and all recording and filing fees, and any and all stamp, court, documentary, excise, intangible and other similar Taxes, if any, which may be payable or determined to be payable in connection with the execution, delivery, enforcement, or registration of, the receipt or perfection of a security interest under, the consummation or administration of any of the transactions contemplated by, any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and any and all liabilities with respect to, or resulting from the delay in paying, any of the foregoing fees or Taxes and (d) to pay, indemnify or reimburse each Lender, each Agent (and any sub-agent thereof) and each Related Party of any of the foregoing Persons (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against, any and all other liabilities, obligations, losses, claims, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitees and its Related Parties arising out of, in connection with, as a result of or with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents or instrument contemplated hereby or thereby, including any of the foregoing relating to the use of proceeds of the Loans, the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Borrower or any of its Restricted Subsidiaries or any of the property of the Borrower or any of its Restricted Subsidiaries, of any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party and regardless of whether any Indemnitee is a party thereto, **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 INDEMNITEE** (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"), provided that the Borrower shall not have any obligation hereunder to any Agent (or any sub-agent thereof) or any Lender (or any Related Party of any such Agent (or any sub-agent thereof) or Lender) with respect to Indemnified Liabilities arising from (i) the gross negligence or willful misconduct of any such Agent (or any sub-agent thereof) or Lender (or any Related Party of any such Agent (or any sub-agent thereof) or Lender), as the case may be, as determined by a court of competent jurisdiction in a final and non-appealable decision, (ii) a material breach of the Loan Documents by any such Agent (or any sub-agent thereof) or Lender (or any Related Party of any such Agent (or any sub-agent thereof) or Lender), as the case may be, as determined by a court of competent jurisdiction in a final and non-appealable decision or (iii) claims against such Indemnitee or any Related Party brought by any other Indemnitee that do not relate to any action or omission of a Loan Party and do not involve claims against any Agent in its capacity as such. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through

telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction. All amounts due under this Subsection 11.5 shall be payable not later than 30 days after written demand therefor. Statements reflecting amounts payable by the Loan Parties pursuant to this Subsection 11.5 shall be submitted to the address of the Borrower set forth in Subsection 11.2, or to such other Person or address as may be hereafter designated by the Borrower in a notice to the Administrative Agent. Notwithstanding the foregoing, except as provided in Subsections 11.5(b) and (c) above or Subsection 4.11, the Borrower shall have no obligation under this Subsection 11.5 to any Indemnitee with respect to any tax, levy, impost, duty, charge, fee, deduction or withholding imposed, levied, collected, withheld or assessed by any Governmental Authority. The agreements in this Subsection 11.5 shall survive repayment of the Loans and all other amounts payable hereunder.

11.6 Successors and Assigns; Participations and Assignments. (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, except that (i) other than in accordance with Subsection 8.7, the Borrower shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the 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 Subsection 11.6. Nothing in this Agreement, expressed or implied, shall be construed to confer, or shall confer, upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause c of this Subsection and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent 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 Subsection 11.6(b)(ii) below, any Lender may, in the ordinary course of business and in accordance with applicable law, assign (other than to any natural person) to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including its Term Loans, pursuant to an Assignment and Acceptance) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment (x) to a Lender, an Affiliate of a Lender, or an Approved Fund (as defined below) and (y) if an Event of Default under Subsection 9.1(a) or (f) with respect to the Borrower has occurred and is continuing, to any other Person; provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the Administrative Agent (such consent not to be unreasonably withheld); provided that no consent of the Administrative Agent shall be required for an assignment to a Lender or an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Initial Term Loan Commitments, Incremental Commitments or Loans under any Facility, the amount of the Initial Term Loan Commitments, Incremental Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an amount of an integral multiple of $1,000,000 unless the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Subsection 9.1(a) or (f) with respect to the Borrower has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (unless waived by the Administrative Agent in any given case in its sole discretion); provided that for concurrent assignments to two or more Approved Funds such assignment fee shall only be required to be paid once in respect of and at the time of such assignments;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire;

(D) any Term Loans acquired by any Loan Party or any Subsidiary thereof shall be retired and cancelled promptly upon acquisition thereof; and

(E) no assignment shall be made to any Defaulting Lender or any of its Subsidiaries.

For the purposes of this Subsection 11.6, the term "Approved Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under

this Agreement (and, in the case of an Assignment and Acceptance 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 (and bound by any related obligations under) Subsections 4.10, 4.11, 4.12, 4.13 and 11.5, and bound by its continuing obligations under Subsection 11.16); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Subsection 11.6 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) of this Subsection 11.6.

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

(v) The Borrower hereby designates the Administrative Agent, and the Administrative Agent agrees, to serve as the Borrower's agent, solely for purposes of this Subsection 11.6, to maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Initial Term Loan Commitments or Incremental Commitments of, and interest and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent 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 Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(vi) Each Lender that sells a participation shall, acting for itself and, solely for this purpose, as an agent of the Borrower, 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 to any Person (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) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and a 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.

(vii) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Subsection 11.6(b) and any written consent to such assignment required by Subsection 11.6(b), the Administrative Agent shall accept such Assignment and Acceptance, record the information contained therein in the Register and give prompt notice of such assignment and recordation to the Borrower. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(viii) On or prior to the effective date of any assignment pursuant to this Subsection 11.6(b), the assigning Lender shall surrender any outstanding Notes held by it all or a portion of which are being assigned. Any Notes surrendered by the assigning Lender shall be returned by the Administrative Agent to the Borrower.

Notwithstanding the foregoing provisions of this Subsection 11.6(b) or any other provision of this Agreement, if the Borrower shall have consented thereto in writing in its sole discretion, the Administrative Agent shall have the right, but not the obligation, to effectuate assignments of Loans, Incremental Commitments and Initial Term Loan Commitments via an electronic settlement system acceptable to Administrative Agent and the Borrower as designated in writing from time to time to the Lenders by Administrative Agent (the "Settlement Service"). At any time when the Administrative Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed Assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be subject to the prior written approval of the Borrower and shall be consistent with the other provisions of this Subsection 11.6(b). Each assigning Lender and proposed Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loans, Incremental Commitments and Initial Term Loan Commitments pursuant to the Settlement Service. Assignments and assumptions of

Loans, Incremental Commitments and Initial Term Loan Commitments shall be effected by the provisions otherwise set forth herein until the Administrative Agent notifies the Lenders of the Settlement Service as set forth herein. The Borrower may withdraw its consent to the use of the Settlement Service at any time upon notice to the Administrative Agent, and thereafter assignments and assumptions of the Loans, Incremental Commitments and Initial Term Loan Commitments shall be effected by the provisions otherwise set forth herein.

Furthermore, no Assignee, which as of the date of any assignment to it pursuant to this Subsection 11.6(b) would be entitled to receive any greater payment under Subsection 4.10, 4.11, 4.12 or 11.5 than the assigning Lender would have been entitled to receive as of such date under such Subsections with respect to the rights assigned, shall, notwithstanding anything to the contrary in this Agreement, be entitled to receive such greater payments unless the assignment was made after an Event of Default under Subsection 9.1(a) or (f) has occurred and is continuing or the Borrower has expressly consented in writing to waive the benefit of this provision at the time of such assignment.

(c) (i) Any Lender may, in the ordinary course of its business and in accordance with applicable law, without the consent of the Borrower or the Administrative Agent, sell participations (other than to any Defaulting Lender or a natural person) to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Initial Term Loan Commitments, Incremental Commitments and the Loans 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) such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents and (D) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Subsection 10.7(a) without regard to the existence of any participation. Any agreement 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 may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the second proviso to the second sentence of Subsection 11.1(a) and (2) directly affects such Participant. Subject to Subsection 11.6(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of (and shall have the related obligations under) Subsections 4.10, 4.11, 4.12, 4.13 and 11.5 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Subsection 11.6(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Subsection 11.7(b) as though it were a Lender, provided that such Participant shall be subject to Subsection 11.7(a) as though it were a Lender.

(ii) No Loan Party shall be obligated to make any greater payment under Subsection 4.10, 4.11 or 11.5 than it would have been obligated to make in the absence of any participation, unless the sale of such participation is made with the prior written consent of the Borrower and the Borrower expressly waives the benefit of this provision at the time of such participation. Any Participant that is not incorporated under the laws of the United States of America or a state thereof shall not be entitled to the benefits of Subsection 4.11 unless such Participant complies with Subsection 4.11(b) and provides the forms and certificates referenced therein to the Lender that granted such participation.

(d) Any Lender, without the consent of the Borrower or the Administrative Agent, may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Subsection 11.6 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute (by foreclosure or otherwise) any such pledgee or Assignee for such Lender as a party hereto.

(e) In connection with any assignment or participation made to any Assignee or Participant, the Borrower shall be entitled to request and receive such information and assurances as it may reasonably request from any Lender or any Assignee or Participant to determine whether any filing with any Governmental Authority or qualification of any Loan or Note under the laws of any jurisdiction is required or whether any assignment or participation is otherwise in accordance with applicable law.

(f) Notwithstanding the foregoing provisions of this Subsection 11.6, nothing in this Subsection 11.6 is intended to or should be construed to limit the Borrower's right to prepay the Term Loans as provided hereunder, including under Subsection 4.4.

11.7 Sharing of Payments by Lenders; Set-off. (a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (i) Term Loan Facility Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Term Loan Facility Obligations due and payable to such Lender at such time to (y) the aggregate amount of the Term Loan Facility Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Term Loan Facility Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (ii) Term Loan Facility Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Term Loan Facility Obligations owing (but not due and payable) to such Lender at such time to (y) the aggregate amount of the Term Loan Facility Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Term Loan Facility Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the

Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Term Loan Facility Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Subsection shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Subsection shall apply).

Each Loan Party 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 any Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon the occurrence of an Event of Default to set-off and appropriate and apply against any amount then due and payable by the Borrower any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower or any Loan Party; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Subsection 2.9 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application.

11.8 Judgment. (a) The obligations of the Loan Parties hereunder and under the other Loan Documents to make payments in a specified currency (the "Obligation Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except

to the extent that such tender or recovery results in the effective receipt by a Loan Party of the full amount of the Obligation Currency expressed to be payable to it under this Agreement or another Loan Document. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other currency other than the Obligation Currency (such other currency being hereinafter in this Subsection 11.8 referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made at the rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Subsection 11.8 being hereinafter in this Subsection 11.8 referred to as the "Judgment Conversion Date").

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Subsection 11.8(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency that could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Loan Party under this Subsection 11.8(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.

(c) The term "rate of exchange" in this Subsection 11.8 means the rate of exchange at which the Administrative Agent, on the relevant date at or about 12:00 noon (New York time), would be prepared to sell, in accordance with its normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.

11.9 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of such counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be delivered to the Borrower and the Administrative Agent.

11.10 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Subsection 11.10, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief

Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.11 Integration. This Agreement and the other Loan Documents represent the entire agreement of each of the Loan Parties party hereto, the Administrative Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by any of the Loan Parties party hereto, the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. This Agreement and the other Loan Documents supersede any and all previous agreements and understandings, oral or written, relating to the matters hereof.

11.12 Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

11.13 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party to the exclusive general jurisdiction of the Supreme Court of the State of New York for the County of New York (the "New York Supreme Court"), and the United States District Court for the Southern District of New York (the "Federal District Court", and together with the New York Supreme Court, the "New York Courts") and appellate courts from either of them; provided that nothing in this Agreement shall be deemed or operate to preclude (i) any Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Term Loan Facility Obligations (in which case any party shall be entitled to assert any claim or defense, including any claim or defense that this Subsection 11.13 would otherwise require to be asserted in a legal action or proceeding in a New York Court), or to enforce a judgment or other court order in favor of the Administrative Agent or the Collateral Agent, (ii) any party from bringing any legal action or proceeding in any jurisdiction for the recognition and enforcement of any judgment and (iii) if all such New York Courts decline jurisdiction over any Person, or decline (or in the case of the Federal District Court, lack) jurisdiction over any subject matter of such action or proceeding, a legal action or proceeding may be brought with respect thereto in another court having jurisdiction.

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such

action or proceeding in any such court or that such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower, the applicable Lender or the Administrative Agent, as the case may be, at the address specified in Subsection 11.2 or at such other address of which the Administrative Agent, any such Lender and the Borrower shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or (subject to clause (a) above) shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Subsection 11.13 any consequential or punitive damages.

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

(b) The Borrower agrees that the relationship between the Administrative Agent and the Borrower and between each Lender and the Borrower is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not constitute a partnership agreement or any other association between the Administrative Agent and the Borrower or between any Lender and the Borrower. The Borrower acknowledges that the Administrative Agent and each Lender has acted at all times only as a creditor to the Borrower within the normal and usual scope of the activities normally undertaken by a creditor and in no event has the Administrative Agent or any Lender attempted to exercise any control over the Borrower or its business or affairs. The Borrower further acknowledges that as of the date hereof the Administrative Agent and each Lender has not taken or failed to take any action under or in connection with its respective rights under the Credit Agreement or any of the other Loan Documents that in any way, or to any extent, has interfered with or adversely affected the Borrower's ownership of Collateral.

11.15 Waiver Of Jury Trial. EACH OF THE BORROWER, THE AGENTS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY NOTES OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 Confidentiality. (a) Each Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (i) to any Agent or any other Lender, (ii) to any Transferee, or prospective Transferee or any creditor or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations which agrees to comply with the provisions of this Subsection 11.16 pursuant to a written instrument (or electronically recorded agreement from any Person listed above in this clause (ii), in respect to any electronic Information (whether posted or otherwise distributed on any Platform)) for the benefit of the Borrower (it being understood that each relevant Lender shall be solely responsible for obtaining such instrument (or such electronically recorded agreement)), (iii) to its Affiliates and the employees, officers, partners, directors, agents, attorneys, accountants and other professional advisors of it and its Affiliates, provided that such Lender shall inform each such Person of the agreement under this Subsection 11.16 and take reasonable actions to cause compliance by any such Person referred to in this clause (iii) with this agreement (including, where appropriate, to cause any such Person to acknowledge its agreement to be bound by the agreement under this Subsection 11.16), (iv) upon the request or demand of any Governmental Authority having jurisdiction over such Lender or its affiliates or to the extent required in response to any order of any court or other Governmental Authority or as shall otherwise be required pursuant to any Requirement of Law, provided that, other than with respect to any disclosure to any bank regulatory authority, such Lender shall, unless prohibited by any Requirement of Law, notify the

Borrower of any disclosure pursuant to this clause (iv) as far in advance as is reasonably practicable under such circumstances, (v) which has been publicly disclosed other than in breach of this Agreement, (vi) in connection with the exercise of any remedy hereunder, under any Loan Document or under any Interest Rate Agreement, (vii) in connection with periodic regulatory examinations and reviews conducted by the National Association of Insurance Commissioners or any Governmental Authority having jurisdiction over such Lender or its affiliates (to the extent applicable), (viii) in connection with any litigation to which such Lender (or, with respect to any Interest Rate Agreement, any Affiliate of any Lender party thereto) may be a party subject to the proviso in clause (iv) above, (ix) if, prior to such Information having been so provided or obtained, such Information was already in an Agent's or a Lender's possession on a non-confidential basis without a duty of confidentiality to the Borrower being violated, (x) to any other party hereto, and (xi) with the consent of the Borrower. In addition, the Administrative Agent may disclose (i) the existence of this Agreement, the global amount, currency and maturity date of any Facility hereunder, and the legal name, country of domicile and jurisdiction of organization of the Borrower, to (i) the CUSIP Bureau and other similar market data collectors or service providers to the lending industry, provided that either such information shall have been previously made publicly available by the Borrower, or the Administrative Agent shall have obtained the written consent of the Borrower (such consent not to be unreasonably withheld or delayed), prior to making such disclosure, and (ii) information about this Agreement to service providers to the Administrative Agent to the extent customary in connection with the administration and management of this Agreement, the other Loan Documents, the Initial Term Loan Commitments, the Incremental Commitments, and the Loans, provided that any such Person is advised of and agrees to be bound by the provisions of this Subsection 11.16 and the Administrative Agent takes reasonable actions to cause such Person to comply herewith. Notwithstanding any other provision of this Agreement, any other Loan Document or any Assignment and Acceptance, the provisions of this Subsection 11.16 shall survive with respect to each Agent and Lender until the second anniversary of such Agent or Lender ceasing to be an Agent or a Lender, respectively. For purposes of this Section, "Information" means all information provided to any Agent or Lender by or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or, any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Subsection shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Each Lender acknowledges that any such information referred to in Subsection 11.16(a), and any information (including requests for waivers and amendments) furnished by the Borrower or the Administrative Agent pursuant to or in connection with this Agreement and the other Loan Documents, may include material non-public information concerning the Borrower, the other Loan Parties and their respective Affiliates or their respective securities. Each Lender represents and confirms that such Lender has developed compliance procedures regarding the use of material non-public information; that such Lender will handle such material non-public information in accordance with those procedures and applicable law, including United States federal and state securities laws; and that such Lender has identified to the Administrative Agent a credit contact who may receive information that may contain

material non-public information in accordance with its compliance procedures and applicable law.

11.17 Incremental Indebtedness; Additional Indebtedness. In connection with the Incurrence by any Loan Party or any Subsidiary thereof of any Incremental Indebtedness or Additional Indebtedness, each of the Administrative Agent and the Collateral Agent agree to execute and deliver the ABL/Term Loan Intercreditor Agreement or any Other Intercreditor Agreement or any Intercreditor Agreement Supplement and amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, any Security Document (including but not limited to any Mortgages and UCC fixture filings), and to make or consent to any filings or take any other actions in connection therewith, as may be reasonably deemed by the Borrower to be necessary or reasonably desirable for any Lien on the assets of any Loan Party permitted to secure such Incremental Indebtedness or Additional Indebtedness to become a valid, perfected lien (with such priority as may be designated by the relevant Loan Party or Subsidiary, to the extent such priority is permitted by the Loan Documents) pursuant to the Security Document being so amended, amended and restated, restated, waived, supplemented or otherwise modified or otherwise, in each case to the extent consistent with the provisions of this Agreement.

11.18 USA Patriot Act Notice. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub.L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify, and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Patriot Act.

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

11.20 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Loan Party for liquidation or reorganization, should any Loan Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Loan Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time

payment and performance of the obligations of the Borrower under the Loan Documents, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the obligations, whether as a fraudulent preference, reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations of the Borrower hereunder shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

[SIGNATURE PAGES FOLLOW]

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

BOOMERANG TUBE, LLC

By:_____
Name:
Title:

AGENT AND LENDERS:

CORTLAND CAPITAL MARKET SERVICES LLC
as Administrative Agent and Collateral Agent

By:_____
Name:
Title:

[_____],
as Lender

By:_____
Name:
Title:

By:_____
Name:
Title:

[_____],
as Lender

By:_____
Name:
Title:

By:_____
Name:
Title:

EXHIBIT 4

GUC Trust Agreement

LIQUIDATING TRUST AGREEMENT

This Liquidating Trust Agreement (the "Trust Agreement"), dated as of [●] [●], 2015 (the "Effective Date"), by and between Boomerang Tube, LLC, a Delaware limited liability company ("Parent"), and [●], as the GUC Trustee (the "Trustee" or the "GUC Trustee"), is executed in connection with the Amended Joint Prearranged Chapter 11 Plan pursuant to Chapter 11 of the Bankruptcy Code proposed by the Debtors as of August 13, 2015 (as may be amended from time to time, the "Plan") that was filed by Parent, BTCSP, LLC and BT Financing, Inc. (collectively, the "Debtors") in the United States Bankruptcy Court for the District of Delaware (the "Court") and provides for the establishment of a liquidating trust evidenced hereby (the "Trust"). All capitalized terms that are used but not otherwise defined herein shall have the meaning ascribed to such terms in the Plan.

W I T N E S S E T H

WHEREAS, the Trust is created pursuant to, and to effectuate, the Plan;

WHEREAS, the Trust is established for the purpose of liquidating the Avoidance Actions for the benefit of the holders of Allowed General Unsecured Claims, and making distributions on Allowed General Unsecured Claims in accordance with the Plan, this Trust Agreement and Section 301.7701-4(d) of the Treasury Regulations, and with no objective or authority to continue or engage in the conduct of a trade or business; and

WHEREAS, the Trust is intended to qualify as a liquidating trust for federal income tax purposes.

NOW, THEREFORE, in consideration of the promises and the mutual covenants and agreements contained herein and in the Plan, Parent and the Trustee agree as follows:

ARTICLE I
ESTABLISHMENT OF THE TRUST

1.1 Transfer of Property to Trustee; Assignment and Assumption of Claims.

(a) Pursuant to the Plan, except as provided in Section 1.2 below, Debtors hereby transfer, assign, and deliver to the Trustee, for the benefit of the Allowed General Unsecured Claims, the GUC Trust Initial Funding Amount and all of their right, title, and interest in and to all their Avoidance Actions free and clear of any Lien, Claim or Interest of any other Person or entity except as provided in the Plan (such assets, the "Trust Assets"). The Trustee agrees to accept and hold the Trust Assets in trust for the Allowed General Unsecured Claims subject to the terms of this Trust Agreement and the Plan.

(b) The Trustee on behalf of the Trust hereby assumes, and agrees that all such Trust Assets will be transferred to the Trust subject to, the following liabilities, if any, which arise out of or relate to any known

or unknown claim (as such term is defined in Section 101(5) of the Bankruptcy Code) or cause of action against the Debtors or their respective Estates: (i) Allowed General Unsecured Claims that have not been paid as of the Effective Date; (ii) all U.S. Trustee Fees attributable to distributions from the Trust, as determined by the Reorganized Debtors, until such time as the Court enters a final decree closing each Debtor's Chapter 11 Case; (iii) any expenses incurred and unpaid, or to be incurred, by the Trustee in the performance of his administrative duties in liquidating the Trust Assets; (iv) payroll taxes owing to federal, state or local tax authorities by the Debtors in respect of payments or distributions on Claims, but only to the extent such payroll taxes constitute Allowed General Unsecured Claims, and excluding any taxes satisfied through withholding; but (v) specifically excluding any General Unsecured Claims which have been barred by, or satisfied under, the Plan.

1.2 Title to Trust Assets.

(a) Debtors shall transfer such Trust Assets to the Trust. Upon the transfer of the Trust Assets, the Trustee shall succeed to all of Debtors' right, title and interest in the Trust Assets and Debtors will not have any interest in, or with respect to, the Trust Assets or this Trust, except with respect to their interest in the GUC Trust Proceeds as described in the Plan under the GUC Trust Waterfall. Holders of Allowed General Unsecured Claims shall be the beneficiaries of the Trust, also referred to hereafter as the GUC Trust Beneficiaries.

(b) For all federal income tax purposes, all relevant parties shall treat (i) the transfer of the GUC Trust Assets to the GUC Trust as (x) a transfer by the Debtors of the GUC Trust Assets directly (net of any applicable liabilities) to each holder of a General Unsecured Claim in satisfaction of such Claim against the Debtors (to the extent of the value of such holder's respective interest in the applicable GUC Trust Assets) followed by (y) the transfer by each such holder of the GUC Trust of the GUC Trust Assets (net of any applicable liabilities) in exchange for beneficial interests in the GUC Trust (to the extent of the value of such holder's respective interest in the applicable GUC Trust Assets) and (ii) the GUC Trust Beneficiaries as the grantors and deemed owners of the GUC Trust. Subject to the terms of the GUC Trust Agreement, the GUC Trustee will determine the fair market value of the GUC Trust Assets as soon as possible after the Effective Date, and the GUC Trust Beneficiaries and the GUC Trustee must consistently use this valuation for all U.S. federal income tax purposes, including for determining gain, loss or tax basis.

1.3 Appointment of the Trustee. The Trustee shall be [●].

ARTICLE II
BENEFICIAL INTERESTS

2.1 Identification of Holders of Beneficial Interests. As soon as practical after the creation of the Trust, the Trustee, or its duly authorized agent, shall record the ownership interests of the GUC Trust Beneficiaries in a register (the "Register"), maintained by the Trustee (or duly authorized agent) for such purpose. All references in this Trust Agreement to holders or GUC Trust Beneficiaries shall be read to mean holders of record as set forth in the Register maintained by the Trustee. Unless expressly provided herein or the Plan, the Trustee may establish a record date that it deems practicable for determining the holders for a particular purpose. The distribution of GUC Trust Proceeds to the GUC Trust Beneficiaries shall be accomplished as set forth in this Trust Agreement and in the Plan.

2.2 Transferability of Beneficial Interests.

(a) All interests of the GUC Trust Beneficiaries shall be uncertificated and confirmed by book entry only in the Register maintained by the Trustee. The Trustee shall not be required to send any notice to GUC Trust Beneficiaries upon their entry in the Register.

(b) Subject to the provision of Section 2.2(c) below, the interests of the GUC Trust Beneficiaries shall be non-transferable by the GUC Trust Beneficiaries. Any purported assignment, pledge, mortgage, sale, transfer or other disposition other than as permitted in Section 2.2(c) shall be void and will not be registered on the Register maintained by the Trustee.

(c) The interests of the GUC Trust Beneficiaries may be transferred by an individual solely by will or the laws of descent and distribution. Any such transfer, however, shall not be effective until and unless the Trustee receives written notice of such transfer.

ARTICLE III
PURPOSE, AUTHORITY, LIMITATIONS, AND DISTRIBUTIONS

3.1 Purpose of the Trust. The Trust shall be established for the sole purpose of liquidating the GUC Trust Assets, and making distributions on Allowed General Unsecured Claims in accordance with the Plan, this Trust Agreement and Section 301.7701-4(d) of the Treasury Regulations, and with no objective to continue or engage in the conduct of a trade or business. Accordingly, the Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Trust Assets of the Trust, make timely distributions and not unduly prolong the duration of the Trust. The liquidation of the Trust Assets may be accomplished either through the sale of Trust Assets (in whole or in combination), including the sale of Avoidance Actions, through the prosecution, compromise or settlement of Avoidance Actions, or otherwise.

3.2 Authority of Trustee. In connection with the administration of the Trust, the Trustee is authorized to perform any and all acts necessary or desirable to accomplish the purposes of the Trust except as set forth in this Trust Agreement or the Plan. Without limiting, but subject to, the foregoing and to Section 3.3, the Trustee shall be expressly authorized, but shall not be required, to:

(a) object to, and otherwise resolve, the allowance of General Unsecured Claims, to the extent permitted under the Plan;

(b) prosecute, abandon, collect, compromise and settle any Avoidance Actions in accordance herewith, without further approval of, or application to, the Bankruptcy Court, except as otherwise provided herein;

(c) open and maintain bank accounts in the name of the Trust, draw checks and drafts thereon on the sole signature of the Trustee, and terminate such accounts as the Trustee deems appropriate;

(d) sell or liquidate any Trust Assets without further approval of or application to the Bankruptcy Court, except as otherwise provided herein;

(e) execute any documents, file any pleadings, and take any other actions related to, or in connection with, the liquidation of the Trust Assets and the exercise of the Trustee's powers granted herein, including the exercise of the Debtors' or the Creditors Committee's respective rights to conduct discovery and oral examination of any party under Rule 2004 of the Federal Rules of Bankruptcy Procedure;

(f) hold legal title to any and all rights of the beneficiaries in or arising from the Trust Assets, including, but not limited to, collecting and receiving any and all money and other property belonging to the Trust and the right to vote any claim or interest in an unrelated case under the Bankruptcy Code and receive any distribution thereon;

(g) protect and enforce the rights to the Trust Assets by any method it deems appropriate, including by judicial proceedings or pursuant to any applicable bankruptcy, insolvency, moratorium or similar law and general principles of equity;

(h) deliver distributions as may be authorized by the Plan;

(i) file, if necessary, any and all tax returns with respect to the Trust; pay taxes, if any, properly payable by the Trust; and make distributions to the beneficiaries net of such taxes in accordance with the requirements hereof;

(j) make all necessary filings in accordance with any applicable law, statute or regulation;

(k) except as otherwise provided herein, dissolve any corporate entities, terminate joint ventures, or otherwise wind up any corporate entity owned by the Trust;

(l) assert or waive any privilege or defense on behalf of the Trust to the extent such privilege is held solely by the Trust; for the avoidance of doubt, the Trust shall have no authority to waive any privilege or defense held by the Debtors, the Debtors' estates, or the Reorganized Debtors, absent the express written consent of the Debtors;

(m) determine and satisfy any and all liabilities created or incurred or assumed by the Trust;

(n) invest moneys received by the Trust or otherwise held by the Trust in accordance with Section 4.5 hereof;

(o) in the event that the Trustee determines that the GUC Trust Beneficiaries or the Trustee may, will or have become subject to adverse tax consequences, take such actions that will, or are intended to, alleviate such adverse tax consequences;

(p) utilize the Trust Assets to purchase or create and carry all appropriate insurance policies and pay all insurance premiums and costs necessary or advisable to insure the acts and omissions of the Trustee;

(q) obtain insurance coverage with respect to real and personal property which may become Trust Assets, if any;

(r) obtain unsecured or secured credit to fund Trust administration or litigation, or for any other purpose consistent with this Trust Agreement;

(s) create one more Entities for the purpose of holding or managing Trust Assets, or in connection with the sale or other disposition thereof, or for any other purpose consistent with the Plan, Confirmation Order, or this Trust Agreement;

(t) retain and pay law firms as counsel to the Trust to aid in the prosecution of any claims or Avoidance Actions that constitute the Trust Assets, and to perform such other functions as may be appropriate. The Trustee shall pay such law firms reasonable compensation for services rendered and expenses incurred. A law firm shall not be disqualified from serving as independent counsel to the Trust solely because of its prior

retention as counsel to the Debtors, the Creditors Committee, or any of the individual members of the Creditors Committee in the Chapter 11 Cases;

(u) retain and pay an independent public accounting firm to perform such reviews and/or audits of the financial books and records of the Trust as may be appropriate and to prepare and file any tax returns or information returns for the Trust as may be required. The Trustee shall pay such independent public accounting firm reasonable compensation for services rendered and expenses incurred. An accounting firm shall not be disqualified from being retained by the Trust solely because of its prior retention by the Debtors, the Creditors Committee, or any of the individual members of the Committee in the Chapter 11 Cases;

(v) retain and pay third parties to assist the Trustee in carrying out its powers and duties under this Trust Agreement. The Trustee shall pay all such persons or entities reasonable compensation for services rendered and expenses incurred. The Trustee may commit the Trust to indemnify any such parties in connection with the performance of services. A third party shall not be disqualified from being retained by the Trust solely because of such party's prior retention by the Debtors, the Creditors Committee, or any of the individual members of the Creditors Committee in the Chapter 11 Cases;

(w) employ employees to assist the Trustee in carrying out its powers and duties under this Trust Agreement. The Trustee shall pay all such employees reasonable salary in the amounts it shall determine to be appropriate. If the Trustee employs employees pursuant to this section, the Trustee shall establish payroll procedures and pay any and all federal, state or local tax withholding required under applicable law with respect to any such employees, obtain workers' compensation insurance, and take all other actions it deems necessary to effectuate the provisions of this section;

(x) preserve and maintain all documents and electronic data (including, without limitation, emails and email server back-up tapes) (collectively, the "Records") transferred to or otherwise acquired by the Trust or the Trustee in accordance with the Plan and this Trust Agreement. The Trustee shall not destroy or otherwise abandon any Records absent an Order of the Bankruptcy Court after a hearing upon notice to all interested Persons with an opportunity to be heard; and

(y) take or refrain from taking any and all actions as may be necessary or helpful to accomplish the purposes of the Plan, including, without in any manner limiting any of the foregoing, dealing with the Trust Assets or any part or parts thereof in all other ways as would be

lawful and prudent for any person or entity owning the same to deal therewith; provided, however, that any such actions shall be limited to those that are consistent with maintaining the Trust's status as a liquidating trust within the meaning of Section 301.7701-4(d) of the Treasury Regulations.

3.3 Limitation of Trustee's Authority.

(a) Notwithstanding anything herein to the contrary, the Trustee shall not be authorized to engage in any trade or business, and shall take such actions consistent with the orderly liquidation of the Trust Assets as are required by applicable law, and such actions permitted under Sections 3.2, 3.5, 3.6 and 4.5 hereof. Notwithstanding any authority granted by Section 3.2 or otherwise within this Trust Agreement, the Trustee is not authorized to engage in any investments or activities inconsistent with the treatment of the Trust as a liquidating trust within the meaning of Treasury Regulation Sections 301.7701-4(d), or inconsistent with Section 345 of the Bankruptcy Code.

(b) Neither the Trust nor the Trustee shall take any action that would result in the Trust becoming subject to registration as an "investment company" pursuant to the Investment Company Act of 1940, as amended.

(c) The Trustee shall not commingle any of the Trust Assets with his or her own property or the property of any other person.

3.4 Books and Records. The Trustee shall maintain books and records relating to the Trust Assets, the income of the Trust and the payment of expenses of, and liabilities of claims against or assumed by, the Trust in such detail and for such period of time as may be necessary to enable it to make full and proper accounting in respect thereof in accordance with Article III hereof and to comply with applicable provisions of law. Such books and records shall be maintained on a modified cash or other comprehensive basis of accounting necessary to facilitate compliance with the tax reporting requirements of the Trust. Except as otherwise specifically provided for herein, nothing in this Trust Agreement requires the Trustee to file any accounting or seek approval of any court with respect to the administration of the Trust, or as a condition for managing any payment or distribution out of the Trust Assets. The Reorganized Debtor and the GUC Trust Beneficiaries shall have the right upon thirty (30) days' prior written notice delivered to the Trustee to inspect such books and records (including financial statements), subject, however, to the requesting Person entering into a confidentiality agreement, satisfactory in form and substance to the Trustee, prior to such inspection. Nothing in this Trust Agreement provides the Reorganize Debtor or any GUC Trust Beneficiary with a right to review, inspect, seek discovery of or otherwise obtain any information that is privileged or subject to a third party's rights of privacy or confidentiality, absent order of the Bankruptcy Court.

3.5 Additional Powers. Except as otherwise set forth in this Trust Agreement or in the Plan, and subject to the Treasury Regulations governing liquidating trusts and the retained jurisdiction of the Bankruptcy Court as provided for in the Plan, but without prior or further authorization, the Trustee may control and exercise authority over the Trust Assets and over the protection, conservation and disposition thereof. No Person dealing with the Trust shall be obligated to inquire into the authority of the Trustee in connection with the protection, conservation or disposition of the Trust Assets.

3.6 Application of Trust Assets and Other Property. The Trustee shall apply all Trust Assets and any proceeds therefrom in accordance with the Plan; provided that, to the extent not inconsistent with the Plan, the Trustee shall cause the Trust to distribute to the GUC Trust Beneficiaries, to the extent economically reasonable, the net income of the Trust plus all net proceeds from the sale of Trust Assets in excess of amounts reasonably necessary to maintain the value of the Trust Assets or to meet claims or contingent liabilities; provided, however, that in the event that any distribution to any GUC Trust Beneficiary is returned as undeliverable, such distribution shall be deemed unclaimed property and will be considered available Cash and may be used to fund the Trust's operations or to fund distributions under the Plan; provided, further, that, pursuant to the Plan, the Trust shall not be obligated to make distributions to a Class of Claims if the amount of the available Cash is de minimis and not sufficient to warrant the incurrence of costs in making the distribution. In the event the Liquidating Trustee holds available Cash after paying all operating expenses and distributions are made, such remaining available Cash shall be distributed to a nationally recognized charitable organization of the Trustee's choice. Neither available Cash nor any Claim or any unclaimed property attributable to such Claim, shall escheat to any federal, state, or local government or other entity.

3.7 Reporting Duties; Federal Income Tax. The Trustee shall file tax returns for the Trust as a grantor trust pursuant to Treasury Regulation Section 1.671-4(a). The Trustee shall also file (or cause to be filed) any other statements, returns or disclosures relating to the Trust that are required by any governmental authority.

3.8 Compliance with Laws. Any and all distributions of Trust Assets and proceeds of borrowings, if any, shall be in compliance with applicable laws, including, but not limited to, applicable federal and state securities laws.

3.9 Setoffs. Subject to Section 6.5 of the Plan, the Trustee may, to extent permitted by sections 502(h), 553, and 558 of the Bankruptcy Code or by applicable non-bankruptcy law, but shall not be required to, set off against any distributions to be made hereunder to a holder of an Allowed General Unsecured Claim, any or all claims, rights and Causes of Action of any nature that the Trustee may at any time hold against such holder; provided, however, that neither the failure to effect such a setoff nor the allowance of any Claim under or in accordance with the Plan shall constitute a waiver or release by the Trustee of any such claim, right and Causes of Action that the Trustee may at any time possess against such holder.

3.10 Disputed Payments. If any dispute arises as to the identity of a holder of an Allowed General Unsecure Claim who is to receive any distribution, the Trustee may, in lieu of making such distribution to such Person, make such distribution into an escrow account to be held in trust for the benefit of such holder, whereupon such distribution shall not constitute property of the Trust. Such distribution shall be held in escrow until the disposition thereof shall by determined by order of the Bankruptcy Court or other court of competent jurisdiction or by written agreement among the interested parties to such dispute.

3.11 Unclaimed Distributions.

(a) Any unclaimed distributions, and all interest, dividends, and other earnings thereon, shall be held and segregated in sub-accounts of the Trust for the benefit of GUC Trust Beneficiaries. All such unclaimed distributions shall be held for a period of six (6) months following the applicable distribution date and during such period shall be released from the Trust and delivered to such GUC Trust Beneficiaries entitled thereto only upon presentation of proper proof by such GUC Trust Beneficiary of such entitlement. The Trustee shall pay, or cause to be paid, out of the funds held in any sub-account, all taxes imposed by any federal, state and local taxing authorities on the income generated by the funds held in such sub-account. The Trustee shall also file, or cause to be filed any tax or information return related to any sub-account. All Cash held in such sub-accounts shall be invested in accordance with section 345 of the Bankruptcy Code. The earnings on such investments shall be held in trust as an addition to the balance of the sub-accounts for the benefit of GUC Trust Beneficiaries entitled to such unclaimed distributions, and shall not constitute property of the Trust.

(b) At the end of six (6) months following the relevant distribution date, as set forth above, the GUC Trust Beneficiaries theretofore entitled to such unclaimed distributions shall cease to be entitled thereto and the unclaimed distributions for each such holders shall then be distributed on a Pro Rata basis to the GUC Trust Beneficiaries who have received and have claimed distributions and who are otherwise entitled to further distributions hereunder.

ARTICLE IV
THE TRUSTEE

4.1 Generally. The Trustee's powers are exercisable solely in a fiduciary capacity consistent with, and in furtherance of, the purposes of this Trust and not otherwise.

4.2 Responsibilities of Trustee.

The Trustee shall, in an expeditious but orderly manner, liquidate and convert to Cash the Trust Assets, make timely distributions and not unduly prolong the duration of the

Trust. In so doing, the Trustee shall exercise its reasonable business judgment in liquidating the Trust Assets. The liquidation of the Trust Assets may be accomplished through the sale of Trust Assets (in whole or in combination), including the sale of any or all of the Avoidance Actions, through the prosecution, compromise or settlement of any or all of the Avoidance Actions, or otherwise. In connection therewith, and subject to the limitations of Section 3.2 hereof, the Trustee will have the power to (i) prosecute for the benefit of the Trust any or all of the Avoidance Actions transferred to the Trust, whether such suits are brought in the name of the Trust, the Debtors or otherwise for the benefit of GUC Trust Beneficiaries, (ii) liquidate the Trust Assets, and (iii) otherwise perform the functions and take the actions permitted or required by the Plan, under applicable law, pursuant to this Trust Agreement. Any and all proceeds generated from such Trust Assets shall be held by the Trust and distributed in accordance with the GUC Trust Waterfall. The Trustee may incur any reasonable and necessary expenses in liquidating the Trust Assets.

4.3 Liability of Trustee; Indemnification. Neither the Trustee, the designees or professionals, or any duly designated agent or representative of the Trustee, nor its respective employees, shall be liable for the act or omission of any other member, designee, agent or representative of such Trustee, nor shall such Trustee, be liable for any act taken or not taken in its capacity as Trustee, other than for specific acts or omissions resulting from such Trustee's willful misconduct, gross negligence, fraud, or breach of the fiduciary duty of loyalty. The Trustee shall be entitled to enjoy all of the rights, powers, immunities and privileges applicable to a chapter 7 trustee. The Trustee may, in connection with the performance of its functions, and in its sole and absolute discretion, consult with its attorneys, accountants, financial advisors and agents, and shall not be liable for any act taken, not taken, or suffered to be done in accordance with advice or opinions rendered by such persons, regardless of whether such advice or opinions are provided in writing. Notwithstanding such authority, the Trustee shall not be under any obligation to consult with its attorneys, accountants, financial advisors or agents, and its determination not to do so shall not result in the imposition of liability on the Trustee and/or its designees, unless such determination is based on willful misconduct, gross negligence, or fraud. The Trust shall indemnify and hold harmless the Trustee, its designees and professionals, and all duly designated agents and representatives thereof (in their capacity as such), from and against and in respect of all liabilities, losses, damages, claims, costs and expenses (including, without limitation, reasonable attorneys' fees, disbursements, and related expenses) which such parties may incur or to which such parties may become subject in connection with any action, suit, proceeding or investigation brought by or threatened against such parties arising out of or due to their acts or omissions, or consequences of such acts or omissions, with respect to the implementation or administration of the Trust or the Plan or the discharge of their duties hereunder; provided, however, that no such indemnification will be made to such persons for actions or omissions as a result of willful misconduct, gross negligence, fraud, or breach of the fiduciary duty of loyalty.

4.4 Reliance by Trustee. Except as otherwise provided in Section 4.3:

(a) the Trustee may rely, and shall be protected in acting upon, any resolution, certificate, statement, instrument, opinion, report, notice,

request, consent, order, or other paper or document believed by the Trustee to be genuine and to have been signed or presented by the proper party or parties;

(b) Persons or entities dealing with the Trustee shall look only to the Trust Assets to satisfy any liability incurred by the Trustee to any such Person in carrying out the terms of this Trust Agreement, and the Trustee shall not have any personal obligation to satisfy any such liability.

4.5 Investment and Safekeeping of Trust Assets. All moneys and other property received by the Trustee shall, until distributed or paid over as herein provided, be held in trust for the benefit of the GUC Trust Beneficiaries, but need not be segregated from other Trust Assets, unless and to the extent required by law. The Trustee shall be under no liability for interest or producing income on any moneys received by it hereunder, except as such interest shall actually be received by the Trustee. Investments of any moneys held by the Trustee shall be administered in view of the manner in which individuals of ordinary prudence, discretion and judgment would act in the management of their own affairs; provided, however, that the right and power of the Trustee to invest the Trust Assets, the proceeds thereof, or any income earned by the Trust, shall be limited to the right and power to invest such Trust Assets in demand and time deposits, such as short-term certificates of deposit, in banks or other savings institutions, or other temporary liquid investments, such as Treasury bills; and provided further, that the scope of any such permissible investments shall be limited to include only those investments, or shall be expanded to include any additional investments, as the case may be, that a liquidating trust, within the meaning of Treasury Regulation Section 301.7701-4, may be permitted to invest in, pursuant to the Treasury Regulations, or any modification in the IRS guidelines, whether set forth in IRS rulings, other IRS pronouncements or otherwise, or the investment guidelines of Bankruptcy Code section 345. Any investment made as provided for herein must mature prior to the date of the next scheduled distribution, but in no event shall such investment have a maturity date in excess of twelve (12) months from the date of the acquisition of such investment. Notwithstanding anything to the contrary, the Trustee shall cause the Trust not to retain Cash or Cash equivalents in excess of a reasonable amount necessary for the purposes described in Section 4.6 hereof.

4.6 Authorization to Expend Trust Assets. Subject in all instances to the GUC Trust Waterfall, the Trustee may expend the Trust Assets (i) as reasonably necessary to meet claims and contingent liabilities and to maintain the value of the Trust Assets during liquidation, (ii) to pay all administrative expenses of the Trust (including, but not limited to, any taxes imposed on the Trust), and (iii) to satisfy all other liabilities incurred or assumed by the Trust (or to which the Trust Assets are otherwise subject) in accordance with the Trust Agreement or the Plan.

4.7 Expense Reimbursement and Compensation. Subject in all instances to the GUC Trust Waterfall,

(a) The Trust Assets shall be subject to the claims of the Trustee and the Trustee shall be entitled to reimburse itself out of any available Cash in the Trust, for any actual out-of-pocket expenses and any indemnity or hold-harmless claims of the Trustee against the Trust for all loss, liability, expense, or damage which the Trustee may sustain in good faith and without willful misconduct, gross negligence, fraud, or breach of the fiduciary duty of loyalty in the exercise and performance of any of the powers and duties of the Trustee under this Trust Agreement. [As compensation for the performance of its duties, the Trustee will be entitled to bill hourly for the services (and at the specific rate) of the individuals listed on Exhibit A attached hereto.][1]

(b) If the Cash in the Trust shall be insufficient to compensate and reimburse the Trustee, including any professionals retained by the Trustee, for any amounts that they are entitled to hereunder and if the Trustee shall be unable to borrow funds sufficient for such compensation and reimbursement in accordance with the terms of this Trust Agreement, then the Trustee is hereby authorized, subject to Sections 3.3(b) and 3.3(c) hereof, to reduce to Cash that portion of the Trust Assets necessary so as to effect such compensation and reimbursement.

4.8 Insurance; Bond. The Trustee shall obtain insurance coverage with respect to the liabilities and obligations of the Trustee under this Trust Agreement (in the form of an errors and omissions policy or otherwise) unless the Trustee determines that such insurance shall not be required. The Trustee shall at all times maintain a bond approved by the Bankruptcy Court, and the cost and expense of which shall be paid by the Trust.

4.9 Compliance with Laws. Except as otherwise provided in the Plan or Confirmation Order, any and all distributions to the GUC Trust Beneficiaries shall be in compliance with applicable state and federal laws, including, but not limited to, applicable state and federal securities laws and any state laws regulating insurance companies and insurance holding companies.

4.10 Confidentiality. The Trustee shall, during the period that it serves as Trustee under this Trust Agreement and following the termination of this Trust Agreement or following the Trustee's removal or resignation hereunder, hold strictly confidential and not use for personal gain any material, non-public information of or pertaining to any Entity to which any of the Trust Assets relates or of which the Trustee has become aware in its capacity as Trustee.

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[1] [NTD: To be updated once Trustee selected and compensation structure determined.]

ARTICLE V
SUCCESSOR TRUSTEE

5.1 Removal. The Trustee may be removed by the written consent of at least sixty-five percent (65%) in number of all GUC Trust Beneficiaries.

5.2 Resignation. The Trustee may resign by giving not less than thirty (30) days' prior written notice to the Bankruptcy Court. Such resignation shall become effective on the later to occur of: (i) the day specified in such notice; and (ii) the appointment of a successor by the Bankruptcy Court.

5.3 Appointment of Successor upon Removal, Resignation, Death, Dissolution, Bankruptcy, or Insolvency. If the Trustee is removed pursuant to Section 5.1 hereof, resigns pursuant to Section 5.2 hereof, dies or is declared incompetent (in the case of a Trustee that is a natural person), dissolves (in the case of a Trustee that is an Entity), files for bankruptcy, or becomes insolvent, each GUC Trust Beneficiary may petition the Bankruptcy Court for the appointment of a successor Trustee.

5.4 Acceptance of Appointment by Successor Trustee. Any successor Trustee appointed hereunder shall execute an instrument accepting such appointment hereunder and shall file such acceptance with the Trust records. Thereupon, such successor Trustee shall, without any further act, become vested with all the rights, powers, and duties of its predecessor in the Trust with like effect as if originally named herein; provided, however, that a removed or resigning Trustee shall (if alive and competent), nevertheless, when requested in writing by the successor Trustee, execute and deliver an instrument or instruments conveying and transferring to such successor Trustee under the Trust all the properties, rights, powers, and trusts of such predecessor Trustee.

5.5 Continuance of the Trust. The death, incapacity, resignation, or removal of the Trustee shall not operate to terminate the Trust created by this Trust Agreement or revoke any existing agency (other than the agency of the former Trustee as Trustee) created pursuant to the terms of this Trust Agreement or invalidate any action taken by the Trustee. The Trustee agrees that the provisions of this Trust Agreement shall be binding upon and inure to the benefit of the Trustee and the Trustee's heirs, legal and personal representatives, successors or assigns, as the case may be. In the event of the resignation or removal of the Trustee, the Trustee shall (if alive and competent) promptly (i) execute and deliver by the effective date of resignation or removal such documents, instruments, and other writings as may be reasonably requested by the successor Trustee to effect the termination of the resigning or removed Trustee's capacity under this Trust Agreement; (ii) deliver to the successor Trustee all documents, instruments, records, and other writings relating to the Trust as may be in the possession or under the control of the resigning or removed Trustee; and (iii) otherwise assist and cooperate in effecting the assumption of the resigning or removed Trustee's obligations and functions by the successor Trustee. The resigning or removed Trustee hereby irrevocably appoints the successor Trustee as his or her attorney-in-fact and agent with full power of substitution for and in his or her name, place and stead to do any and all such acts that such resigning or removed Trustee is obligated to

perform under this Section 5.5. Such appointment shall not be affected by the subsequent disability or incompetence of the Trustee making such appointment.

ARTICLE VI
REPORTS TO HOLDERS OF BENEFICIAL INTERESTS

6.1 Securities Laws, Tax and Other Reports to Holders of Beneficial Interests.

(a) Under section 1145 of the Bankruptcy Code, the interests of the GUC Trust Beneficiaries in the Trust shall be exempt from registration under the Securities Act of 1933 and applicable state and local laws requiring registration of securities. If the Trustee determines, with the advice of counsel, that the Trust is required to comply with the registration and reporting or other requirements of the Securities Exchange Act of 1934, as amended, or the Investment Company Act of 1940, as amended, then the Trustee shall take any and all actions to comply with, or qualify for exemption from, such reporting or other requirements and to file periodic reports with the Securities and Exchange Commission as necessary.

(b) The Trustee shall submit to the GUC Trust Beneficiaries an annual statement setting forth each holder's share of items of income, gain, loss, deduction or credit and provide to all such holders information for reporting such items on the holders' federal income tax returns, as appropriate. Allocations of the Trust taxable income shall be determined in accordance with applicable tax principles prescribed by the Internal Revenue Code of 1986, as amended, the regulations promulgated thereunder, and other applicable administrative and judicial authorities and pronouncements.

(c) The Trustee shall file (or cause to be filed) any other statements, returns or disclosures relating to the Trust that are required by any governmental authority.

(d) The Trustee shall prepare, file and/or distribute any additional reports as required under this Trust Agreement or the Plan.

ARTICLE VII
TERMINATION OF TRUST

7.1 Termination of Trust. The Trust will terminate on the earlier of (a) thirty (30) days after the distribution of all of the Trust Assets in accordance with the terms of this Trust Agreement and the Plan and its full performance of all other duties and functions set forth herein or in the Plan; and (b) the fifth (5th) anniversary of the Effective Date; provided, however, that, on or prior to the date six (6) months prior to such termination, the Court, upon motion by a party in interest, may extend the term of the Trust if it is necessary or appropriate for the

liquidation of the Trust Assets. Notwithstanding the foregoing, multiple extensions can be obtained so long as Court approval is obtained at least six (6) months prior to the expiration of each extended term. The aggregate of all such extensions shall not exceed three (3) years, unless the Trustee receives a favorable ruling from the IRS that any further extension would not adversely affect the status of the Trust as a liquidating trust within the meaning of Treasury Regulation § 301.7701-4(d) for federal income tax purposes. The Trustee shall not unduly prolong the duration of the Trust and shall at all times endeavor to resolve, settle or otherwise dispose of all claims that constitute Trust Assets and to effect the distribution of the Trust Assets to the GUC Trust Beneficiaries in accordance with the terms hereof and terminate the Trust as soon as practicable. Prior to and upon termination of the Trust, the Trust Assets will be distributed to the GUC Trust Beneficiaries in accordance with the terms of this Trust and the Plan.

ARTICLE VIII
AMENDMENT AND WAIVER

8.1 Amendment. Any material term or provision of this Trust Agreement may be amended or waived by the Trustee, with the approval of the Bankruptcy Court. The Trustee may make technical amendments to this Trust Agreement as necessary to clarify this Trust Agreement or enable the Trustee to effectuate the terms of this Trust Agreement to the extent that such amendments do not conflict with the Plan. Notwithstanding this Section 8.1, any amendments to this Trust Agreement shall be consistent with the purpose and intention of the Trust to liquidate in an expeditious but orderly manner the Trust Assets in accordance with Treasury Regulation 301.7701-4(d) and Section 3.1 hereof.

ARTICLE IX
MISCELLANEOUS PROVISIONS

9.1 Intention of Parties to Establish Trust. This Trust Agreement is intended to create a liquidating trust for federal income tax purposes and, to the extent provided by law, shall be governed and construed in all respects as such a trust and any ambiguity herein shall be construed consistent herewith and, if necessary, this Trust Agreement may be amended to comply with such federal income tax laws, which amendments may apply retroactively.

9.2 Preservation of Privilege and Defenses. Any attorney-client privilege, work-product privilege, or other privilege or immunity of the Debtors attaching to any documents or communications (whether written or oral) (collectively, "Privileged Material"), including Privileged Material related to the Trust Assets, shall remain with the Debtors and Reorganized Debtors, as applicable, and shall not be transferred to the Trust in connection with the transfer of the Trust Assets. However, to the extent that the Debtors or Reorganized Debtors provide the Trustee with Privileged Material in accordance with Section 9.3, the applicable privilege shall remain intact without compromising the privileged nature of such Privileged Material, in accordance with the "community of interest" doctrine or any other privilege, and any disclosure of Privileged Material to the Trustee shall not serve to waive any applicable privilege.

The Debtors and the Trustee are authorized to take all necessary actions to effectuate the transfer of such privileges and available defenses.

9.3 Cooperation and Further Assurances of the Debtors. Each of the Debtors and Reorganized Debtors shall provide the Trustee with access to its books and records so as to enable the Trustee to perform its duties and exercise its powers hereunder; provided that the Debtors and Reorganize Debtors shall not be required to, but may in their sole discretion, provide the Trustee access to Privileged Materials, subject to Section 9.2. The Debtors and Reorganized Debtors shall, upon reasonable request of the Trustee, execute, acknowledge and deliver such further instruments and do such further acts as may be necessary or proper to transfer to the Trustee any portion of the Trust Assets intended to be conveyed in the form and manner provided for in the Plan and to vest in the Trustee the powers, instructions, or funds in trust hereunder. The Debtors and Reorganized Debtors shall also, upon reasonable request of the Trustee, provide additional documentation or information necessary to resolve Claims and resolve and prosecute all Avoidance Actions. The Debtors, for themselves and any predecessor or successor entity (including the Reorganized Debtors), hereby disclaim and waive any and all rights to any reversionary interests in any of the Trust Assets, except with respect to their interest in the GUC Trust Proceeds as described in the Plan under the GUC Trust Waterfall and the Privileged Material.

9.4 Laws as to Construction. This Trust Agreement shall be governed and construed in accordance with the laws of the State of Delaware, without giving effect to rules governing the conflict of law.

9.5 Severability. If any provision of this Trust Agreement or the application thereof to any person or circumstance shall be finally determined by a court of competent jurisdiction to be invalid or unenforceable to any extent, the remainder of this Trust Agreement, or the application of such provision to persons or circumstances other than those as to which it is held invalid or unenforceable, shall not be affected thereby, and the remainder of this Trust Agreement shall be valid and enforceable to the fullest extent permitted by law.

9.6 Notices. Any notice or other communication hereunder shall be in writing and shall be deemed to have been sufficiently given, for all purposes, if deposited, postage prepaid, in a post office or letter box addressed to the person for whom such notice is intended:

If to Debtors:

Boomerang Tube, LLC
14567 N. Outer Forty Road, 5th Floor
Chesterfield, Missouri 63017
Attention: General Counsel or Chief Financial Officer

with copies (that shall not constitute notice) to:

Young Conaway Stargatt & Taylor, LLP
1000 N. King Street

Wilmington, DE 19801
Attention: Robert S. Brady

Debevoise & Plimpton LLP
919 Third Avenue
New York, New York 10022
Attention: My Chi To

If to the Trustee:

[●]
Attention: [●]

with copies (that shall not constitute notice) to:

[●]
Attention: [●]

9.7 Headings. The section headings contained in this Trust Agreement are solely for convenience of reference and shall not affect the meaning or interpretation of this Trust Agreement or of any term or provision hereof.

9.8 Relationship to the Plan and Confirmation Order. The principal purpose of this Trust Agreement is to aid in the implementation of the Plan and therefore this Trust Agreement incorporates the provisions of the Plan and Confirmation Order. To that end, the Trustee shall have full power and authority to take any action consistent with the purpose and provisions of the Plan and Confirmation Order, and to seek any orders from the Bankruptcy Court in furtherance of implementation of the Plan and this Trust Agreement. If any provision of this Trust Agreement is found to be inconsistent with any provision of the Plan, the provision of the Plan shall control and take precedence. Any reference to the Plan and provisions thereof in this Trust Agreement shall be construed to include references to the Confirmation Order, including any provisions of the Confirmation Order that supersede the Plan.

9.9 Exclusive Jurisdiction and Standing. As provided in Article XI of the Plan, the Bankruptcy Court has exclusive jurisdiction over all controversies, suits and disputes that may arise under this Trust Agreement. The Trustee shall have standing in any such proceeding to enforce the rights of the Trust or of the GUC Trust Beneficiaries arising under this Trust Agreement or the Plan. Any and all claims asserted against, and disputes with, the Trustee, if any, are subject to the exclusive jurisdiction of the Bankruptcy Court.

9.10 Counterparts. This Trust Agreement may be executed in counterparts, each of which shall constitute an original and all of which shall be deemed to constitute one and the same Trust Agreement. Facsimile or .PDF signatures shall constitute acceptable binding signatures for purposes of this Trust Agreement.

{Signature Pages Follow}

IN WITNESS WHEREOF, the parties hereto have either executed and acknowledged this Trust Agreement, or caused it to be executed and acknowledged on their behalf by their duly authorized officers all as of the date first above written.

BOOMERANG TUBE, LLC

Parent

By: _____
Name:
Title:

[●]

Trustee

By: _____
Name:
Title:

EXHIBIT A

[Professionals to whom compensation may be paid per § 4.7]

EXHIBIT 5

List of Contracts to be Assumed under Section 5.1 of the Plan

List of Executory Contracts and Unexpired Leases to be Assumed Under the Plan

The following table sets forth the Executory Contracts and Unexpired Leases that the Debtors will assume under Section 5.1 of the Plan, along with the corresponding Cure Obligations. To the extent that the Debtors enter into any amendment or modification of any of the Executory Contracts and Leases being assumed under section 5.1 of the Plan in connection with, or prior to, the assumption of such Executory Contract and Lease, such agreement will be assumed as amended or modified. This listing remains subject to further amendment and modification as set forth in Article V of the Plan.

Counterparty Name	**Contract Description**	**Cure Obligation**[1]
Abbot Machine Company	Remanufacture Quotation Dated October 27, 2014, Quote No: 477-32.2	$0.00
Access Industries Management LLC	Management Services Agreement dated 6/8/2015 ****This agreement is being assumed solely to the extent provided for in Section 5.3(c) of the Plan****	$0.00
ADP Inc.	ADP Workforce Now Comprehensive Services Agreement dated September 22, 2011	$0.00
ADP Payroll	Agreement dated March 2, 2010 - Payroll Processing & Related Tax Filings	$0.00
Aetna (Health Insurance)	Agreement for Administration for the Self Insurance Health Plan.	$0.00
Aetna Life Insurance Company	Master Services Agreement between Aetna Life Insurance Company and Boomerang Tube LLC dated February 26, 2013	$0.00
American Petroleum Institute	API Monogram License Agreement dated as of November 15, 2010	$0.00
Appalachian Pipe Distributors, LLC	Distributorship Agreement effective June 17, 2013	$0.00
Caterpillar Financial Services	Lease # 001-0667592-000 Dated 8/9/13 - 2013 Caterpillar 972K Medium Wheel Loader	$9,061.64
Caterpillar Financial Services	Lease # 001-0667592-000 Dated 9/14/13 - 2012 Caterpillar 972K Medium Wheel Loader, and 2012 Caterpillar 972k Medium Loader (2 Tractors)	$19,531.76
CenterPoint Energy Services, Inc.	Letter Agreement dated as of September 8, 2010	$0.00
City of Liberty, Texas	Electric Service and Rate Agreement dated as of August 10, 2010	$0.00
City of Liberty, Texas	Revised Tax Abatement Agreement dated as of January 12, 2010, as supplemented by the Tax Payment Agreement entered into on or about April, 2015	$0.00

[1] Cure Obligations for employment agreements (marked as "(*)") are as set forth in the confidential notice of potential assumption provided to the affected employees contemporaneous with the filing of the Plan Supplement.

Counterparty Name	Contract Description	Cure Obligation[1]
CSI Leasing, Inc.	Lease Agreement for Office Equipment and Software dated 10/1/2013	$1,797.41
De Lage Landen Financial Services, Inc.	Lease Agreement dated 6/1/2013	$1,911.72
De Lage Landen Financial Services, Inc.	Lease Agreement dated 9/1/2013	$882.99
Delta Dental of Missouri	Administrative Services Contract Enrollment Agreement between Boomerang Tube LLC and Delta Dental of Missouri dated January 16, 2012	$0.00
Delta Dental of Missouri	Addendum to the Administrative Services Contract Enrollment Agreement between Boomerang Tube LLC and Delta Dental of Missouri effective January 1, 2012, dated as of December 22, 2011	$0.00
Don Phillips	Employment Agreement effective as of January 1, 2013	(*)
Dorothea Schmidt	Employment Agreement effective as of January 1, 2013	(*)
Dwayne Pickens	Employment Agreement effective as of January 1, 2013	(*)
Encana Corporation	Master Purchase Agreement dated as of July 1, 2011	$0.00
Encana Oil & Gas (USA), Inc.	Agreement for the Sale and Purchase of Oil Country Tubular Goods dated as of December 20, 2010	$0.00
Enterprise Fleet Management	Lease Agreement dated 1/1/2013 (Audi A7)	$0.00
Enterprise Fleet Management	Lease Agreement dated 2/7/2013 (2013 Ford Explorer)	$0.00
Frank M. Jordan	Lease Agreement btw Frank M. Jordan and Boomerang Tube, LLC dated 1/22/2014 (LOCATION: 402 Highway 90, Liberty, TX 77575)	$1,946.67
GB Tubulars Inc.	License Agreement dated as of April 1, 2011	$472,323.75
Innovative Tech	Agreement for Full Service Quality Assurance Program	$0.00
IQMS	IQMS Software License and Support Services Agreement, effective as of December 30, 2008	$10,734.51
Jason Roberts	Employment Agreement dated June 2014	(*)
Kelly Hanlon	Employment Agreement effective as of January 1, 2013	(*)
Kenneth Long	Employment Agreement effective as of January 1, 2013	(*)
Konica Minolta Business Solutions	Monthly maintenance agreements for the Konica Minolta (QDS) items	$1,932.45

Counterparty Name	Contract Description	Cure Obligation[1]
Konica Minolta (QDS)	Equipment Lease Agreement dated 12/13/2013 - (1- KIP 7170 Printer)	$714.14
Konica Minolta (QDS)	Equipment Lease Agreement dated 6/25/2013 - (2-C454e & 2-C654)	$3,054.97
Konica Minolta (QDS)	Equipment Lease Agreement dated 6/24/2013 - (3-C454e)	$4,961.53
Konica Minolta (QDS)	Equipment Lease Agreement dated 12/10/2014 - (2-C284e & 2-C384e)	$2,753.00
Lawrence Toomey	Employment Agreement effective as of January 1, 2013	(*)
Liberty County, Texas	Amended Tax Abatement Agreement dated as of December 30, 2008, as supplemented by the Tax Payment Agreement entered into on or about April, 2015	$0.00
Liberty Independent School District	Agreement for the Limitation on Appraised Value of Property for School District Maintenance and Operation Taxes dated as of December 16, 2008, as supplemented by the Tax Payment Agreements entered into on February 18, 2014 and on or about April, 2015	$0.00
Manchester Leasing Company	Lease # 7861 Dated 4/18/11 - Office Furniture	$0.00
Manchester Leasing Company	Lease # 7872 Dated 5/23/11 - Office Furniture	$0.00
Manchester Leasing Company	Lease # 8016 Dated 1/5/12 - Office Furniture	$0.00
Manchester Leasing Company	Lease # 8095 Dated 3/27/12 - Office Furniture	$0.00
Michael Cullen	Employment Agreement dated as of September 5, 2012, as amended September 12, 2012.	(*)
Microsoft Licensing, GP	Master Agreement No. E9781334, Microsoft Enterprise 6 Enrollment No. 83263077	$0.00
Microsoft Licensing, GP	Master Agreement No. E4154505, Microsoft Enterprise 6 Enrollment No. 86253293	$0.00
Mustang Cat/Machinery	Lease # A8P00459 Dated 2/17/2015 - Caterpillar 972M	$17,045.51
Mustang Cat/Machinery	Lease # A8P00464 Dated 2/17/2015 - Caterpillar 972M	$17,045.51
Mustang Cat/Machinery	Lease # A8P00403 Dated 12/17/2014 - Caterpillar 972M	$24,680.56
Mustang Cat/Machinery	Lease # A8P00457 Dated 12/17/2014 - Caterpillar 972M	$24,680.56
Mustang Cat/Machinery	Lease # A8P00407 Dated 12/17/2014 - Caterpillar 972M	$24,680.56
NMHG Financial Services, Inc.	Lease # 8454319-013 Dated 3/18/11 for Hyster J30XNT Forklift	$546.00

Counterparty Name	Contract Description	Cure Obligation[1]
NMHG Financial Services, Inc.	Lease # 8454319015 Dated 5/14/13 for 1) Hyster Lift Model H100FT 2) Hyster Lift Model H100FT	$1,855.02
NMHG Financial Services, Inc.	Lease # 8454319-005 Dated 8/3/2010 for Hyster H60FT 6,000 lb Capacity Lift Truck	$582.37
NMHG Financial Services, Inc.	Lease # 8454319014 Dated 5/16/13 for 1) Hyster Lift Model H60FT 2) Hyster Lift Model H60FT 3) Hyster Lift H155FT	$542.13
NMHG Financial Services, Inc.	Lease # 8454319-008 Dated 10/27/10for Hyster Lift H360HD	$2,920.23
NMHG Financial Services, Inc.	Lease # 8454319-010 Dated 11/23/10 for Hyster Lift H60FT	$545.66
NMHG Financial Services, Inc.	Lease # 8454319-004 Dated 9/15/10 for Hyster Lift H100FT	$890.17
NMHG Financial Services, Inc.	Lease # 8454319-009 Dated 11/18/10 for Hyster Lift H155FT	$1,500.63
NMHG Financial Services, Inc.	Lease # 8454319-003 Dated 8/3/10 for Hyster Lift H100FT	$890.15
NMHG Financial Services, Inc.	Lease # 8454319-012 Dated 11/29/10 for Hyster Lift H360HD	$2,920.23
Robert Heaster	Employment Agreement effective as of January 1, 2013	(*)
Steve Maune	Employment Agreement effective as of January 1, 2013	(*)
Tracy Kelley	Employment Agreement effective as of January 1, 2013	(*)
U S Bank Equipment Finance	Equipment Lease Agreement dated 10/7/2013 (Tennant Co. Scrubbers / Sweepers)	$7,834.51
United Healthcare Services, Inc.	Administrative Services Agreement between United HealthCare Services, Inc. and Boomerang Tube, LLC effective January 1, 2015	$0.00

EXHIBIT 6

New Holdco Bylaws

BY-LAWS

OF

BOOMERANG TUBE HOLDINGS, INC.

A Delaware Corporation

Effective [●], 2015

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BY-LAWS

OF

BOOMERANG TUBE HOLDINGS, INC.
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be in the City of [•],[•] County , State of Delaware.

Section 1.2 Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.1 Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors.

Section 2.2 Annual Meetings. The Annual Meeting of Stockholders for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the Annual Meeting of Stockholders.

Section 2.3 Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation, as amended and restated from time to time (the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any Vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of (i) the Board of Directors, (ii) a committee of the Board of Directors that has been duly designated by the Board of Directors and whose powers and authority include the power to call such meetings or (iii) stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. At a Special Meeting of Stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 2.4 Notice. Whenever stockholders are required or permitted to take any action at a meeting, notice of the meeting shall be given by providing such notice personally or by facsimile, telephone, email or other means of electronic communication which shall state the place, date and hour of the meeting, and, in the case of a Special Meeting, the purpose or

purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 2.5 Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 4 hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 2.6 Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 5 hereof, until a quorum shall be present or represented.

Section 2.7 Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws or permitted by the rules of any stock exchange on which the Corporation's shares are listed and traded, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented at the meeting and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 11(a) of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 8 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 2.8 Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be

accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram or cablegram to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such telegram or cablegram, provided that any such telegram or cablegram must either set forth or be submitted with information from which it can be determined that the telegram or cablegram was authorized by the stockholder. If it is determined that such telegrams or cablegrams are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing, telegram or cablegram authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing, telegram or cablegram for any and all purposes for which the original writing, telegram or cablegram could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, telegram or cablegram.

Section 2.9 Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 9 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have

not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided above in this Section 9.

Section 2.10 List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held or (ii) during ordinary business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 2.11 Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the

Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 2.12 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 10 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 2.13 Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

ARTICLE III

DIRECTORS

Section 3.1 Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by the Board of Directors in accordance with the Stockholders Agreement (as referenced in the Certificate of Incorporation, as amended or amended and restated from time to time). Except as provided in Section 2 of this Article III, directors shall be elected by a plurality of the votes cast at each Annual Meeting of Stockholders and each director so elected shall hold office until the next Annual Meeting of Stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 3.2 Vacancies. Unless otherwise required by law or the Certificate of Incorporation, vacancies on the Board of Directors or any committee thereof arising through death, resignation, removal, an increase in the number of directors constituting the Board of Directors or such committee or otherwise may be filled only (i) by a majority of votes cast at a Special Meeting of Stockholders (or by a consent in writing in the manner contemplated in Section 9 of Article II), in accordance with Section 4.7(b) of the Stockholders Agreement, if

applicable, (ii) by the Board of Directors if the Board of Directors receives the nomination or designation from the stockholder or stockholders entitled to fill the vacancy pursuant to the Section 4.7(b) of the Stockholders Agreement, if applicable, (iii) in accordance with Section 4.7(b) of the Stockholders Agreement with respect to a vacancy created by the resignation or removal of the Chief Executive Officer; or (iv) if the Stockholders Agreement provision is not applicable, by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. The directors so chosen shall, in the case of the Board of Directors, hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal and, in the case of any committee of the Board of Directors, shall hold office until their successors are duly appointed by the Board of Directors or until their earlier death, resignation or removal.

Section 3.3 Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

Section 3.4 Meetings. The Board of Directors and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors or any committee thereof may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors or such committee, respectively. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or by any director. Special meetings of any committee of the Board of Directors may be called by the chairman of such committee, if there be one, the President, or any director serving on such committee. Notice thereof stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 3.5 Organization. At each meeting of the Board of Directors or any committee thereof, the Chairman of the Board of Directors or the chairman of such committee, as the case may be, or, in his or her absence or if there be none, a director chosen by a majority of the directors present, shall act as chairman. Except as provided below, the Secretary of the Corporation shall act as secretary at each meeting of the Board of Directors and of each committee thereof. In case the Secretary shall be absent from any meeting of the Board of Directors or of any committee thereof, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting. Notwithstanding the foregoing, the members of each committee of the Board of Directors may appoint any person to act as secretary of any meeting of such committee and the Secretary or any Assistant Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 3.6 Resignations and Removals of Directors. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing to the Chairman of the Board of Directors, if there be one, the President or the Secretary of the Corporation and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of preferred stock then outstanding and the Stockholders Agreement (as referenced in the Certificate of Incorporation, as amended or amended and restated from time to time), any director or the entire Board of Directors may be removed from office at any time by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 3.7 Quorum. Except as otherwise required by law, the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the Corporation's securities are listed or quoted for trading, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board of Directors or such committee, as applicable. If a quorum shall not be present at any meeting of the Board of Directors or any committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 3.8 Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

Section 3.9 Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 shall constitute presence in person at such meeting.

Section 3.10 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. The Board of Directors

may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required. Notwithstanding anything to the contrary contained in this Article III, the resolution of the Board of Directors establishing any committee of the Board of Directors and/or the charter of any such committee may establish requirements or procedures relating to the governance and/or operation of such committee that are different from, or in addition to, those set forth in these By-Laws and, to the extent that there is any inconsistency between these By-Laws and any such resolution or charter, the terms of such resolution or charter shall be controlling.

Section 3.11 Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 3.12 Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV

OFFICERS

Section 4.1 General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 4.2 Election. The Board of Directors, at its first meeting held after each Annual Meeting of Stockholders (or action by written consent of stockholders in lieu of the Annual Meeting of Stockholders), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 4.3 Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4.4 Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board of Directors shall be the Chief Executive Officer of the Corporation, unless the Board of Directors designates the President as the Chief Executive Officer, and, except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 4.5 President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board of Directors. If there be no Chairman of the Board of Directors, or if the Board of Directors shall otherwise designate, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 4.6 Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 4.7 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 4.8 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 4.9 Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 4.10 Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restoration to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 4.11 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

STOCK

Section 5.1 Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation (i) by the

Chairman of the Board of Directors, or the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation.

Section 5.2 Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.3 Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 5.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5.5 Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.6 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its

books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 5.7 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

ARTICLE VI

NOTICES

Section 6.1 Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 6.2 Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting of Stockholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the General Corporation Law of the State of Delaware (the "DGCL") and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any

property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 7.2 Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7.3 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 7.4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. To the extent an officer or director of the Corporation was an officer or director of a subsidiary of the Corporation prior to the Effective Date, such person shall only be entitled to indemnification and related rights for matters prior to the Effective Date in accordance with the governing documents of such subsidiary. "Effective Date" shall be as defined in the Plan on the date hereof. "Plan" shall mean the Debtors' Amended Joint Prearranged Chapter 11 Plan pursuant to Chapter 11 of the Bankruptcy Code, filed on September 4, 2015.

Section 8.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, the Corporation shall

indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; except that no indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 8.3 Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 8.4 Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be

deemed to have met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be.

Section 8.5 Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 8.6 Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 8.7 Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 8.8 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any

such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 8.9 Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 8.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.11 Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VIII), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

Section 8.12 Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

ARTICLE IX

FORUM FOR ADJUDICATION OF CERTAIN DISPUTES

Section 9.1 Forum for Adjudication of Certain Disputes. Unless the Corporation consents in writing to the selection of an alternative forum (an "Alternative Forum Consent"), the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation arising out of or relating to any provision of the General Corporation Law of Delaware or the Corporation's Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine of the State of Delaware; *provided, however*, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.1 of Article IX. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Section 9.1 of Article IX with respect to any current or future actions or claims.

ARTICLE X

AMENDMENTS

Section 10.1 Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 10.2 Entire Board of Directors. As used in this Article X and in these By-Laws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

* * *

Adopted as of: _____

Last Amended as of: _____

EXHIBIT 7

New Holdco Certificate of Incorporation

CERTIFICATE OF INCORPORATION

OF

BOOMERANG TUBE HOLDINGS, INC.

FIRST: The name of the Corporation is Boomerang Tube Holdings, Inc. (hereinafter the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is [•]. The name of its registered agent at that address is [•].

THIRD: The purpose of the Corporation is to engage in any lawful act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the Delaware Code (the "DGCL").

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is [2,000,000] of which the Corporation shall have authority to issue [•] shares of Common Stock, each having a par value of one cent $0.01 $[•], and [200,000] shares of Preferred Stock, each having a par value of one cent $0.01.

The Board of Directors (the "Board") is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such class or series and as may be permitted by the DGCL, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of

stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of Common stock, without a vote of the holders of the Preferred Stock, or any class or series thereof, unless a vote of any such holders of Preferred Stock is required pursuant to another provision of this Certificate of Incorporation (including any certificate of designation).

Except as otherwise required by law or this Certificate of Incorporation, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any amendment to any Preferred Stock designation) that relates solely to the terms of one or more outstanding class or series of Preferred Stock if the holders of such affected class or series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to this Certificate of Incorporation.

Pursuant to Section 1123(a)(6) of chapter 11 of title 11 of the United States Code, as amended (the "Bankruptcy Code"), the Corporation shall not issue any non-voting capital stock of any class, series or other designation; *provided, however*, that the provisions of this sentence shall (i) have no further force or effect beyond what is required by Section 1123(a)(6) of the Bankruptcy Code and (ii) only have such force and effect to the extent and for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applies to the Corporation.

FIFTH: The name and mailing address of the Sole Incorporator is as follows:

Name	Address
[•]	[•]

SIXTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board.

(2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation.

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.

(4) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(5) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided*, *however*, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SEVENTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the By-Laws of the Corporation.

EIGHTH: [SELECTED TRANSFER PROVISIONS, INCLUDING DRAG ALONG PROVISIONS, TO BE ADDED FROM STOCKHOLDERS AGREEMENT]

NINTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of shares of Common Stock or Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Excluded Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, an Excluded Person expressly and solely in such Excluded Person's capacity as a director of the Corporation. [TO BE EXPANDED TO COVER ANY ADDITIONAL CORPORATE OPPORTUNITY WAIVERS FROM THE STOCKHOLDERS AGREEMENT]

TENTH: The Corporation elects not to be governed by Section 203 of the DGCL.

ELEVENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

I, THE UNDERSIGNED, being the Sole Incorporator hereinbefore named, for the purpose of forming a corporation pursuant to the DGCL, do make this Certificate, hereby declaring and certifying that this is my act and deed and the facts herein stated are true, and accordingly have hereunto set my hand this [●] day of [●], 2015.

_____

[●]
Sole Incorporator

EXHIBIT 8

New Holdco Shareholders Agreement

STOCKHOLDERS AGREEMENT

AMONG

BOOMERANG TUBE HOLDINGS, INC.

AND

ITS STOCKHOLDERS

PARTY HERETO

DATED AS OF [•], 2015

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STOCKHOLDERS AGREEMENT

This Stockholders Agreement (as it may be amended, supplemented or otherwise modified from time to time, this "**Agreement**"), dated as of [•], 2015 (the "**Effective Date**"), is entered into among Boomerang Tube Holdings, Inc., a Delaware corporation (the "**Company**"), each of the other parties executing a counterpart signature page hereof or a joinder agreement hereto substantially in the form of Exhibit A hereto, in each case, whether on the date hereof or hereafter, and any other Person deemed to have executed this Agreement pursuant to the terms of the Plan (as defined below) (collectively, the "**Stockholders**").

W I T N E S S E T H:

WHEREAS, on June 9, 2015, the Company and certain of its debtor subsidiaries (the "**Debtors**") filed a voluntary petition for relief under chapter 11 of title 11 of the United States Code (the "**Bankruptcy Code**") in the United States Bankruptcy Court for the District of Delaware (the "**Bankruptcy Court**").

WHEREAS, on September 4, 2015, the Debtors filed that certain Debtors' Amended Joint Prearranged Chapter 11 Plan pursuant to Chapter 11 of the Bankruptcy Code (as amended and supplemented, the "**Plan**");

WHEREAS, on [●], 2015, the Bankruptcy Court entered an order confirming the Plan;

WHEREAS, the Plan provides for, among other things, the cancellation of all existing equity in Boomerang Tube, LLC and the issuance of the Common Stock in the Company;

WHEREAS, in connection with the consummation of the transactions contemplated by the Plan, the Company and the Stockholders desire to enter into this Agreement to provide certain rights and obligations among them; and

WHEREAS, capitalized terms used but not otherwise defined herein shall have the respective meanings ascribed to them in Section 1.1.

ARTICLE I

CERTAIN DEFINITIONS

Section 1.1 Definitions

As used in this Agreement, the following terms shall have the following respective meanings:

"**Accepted Shares**" has the meaning specified in Section 4.1(a).

"**Affiliate**" of a Person means (a) such Person's controlling member, general partner, manager and investment manager and affiliates thereof; (b) any entity with the same general partner, manager or investment manager as such Person or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager of such Person;

and (c) any other Person that directly or indirectly through one or more intermediaries, controls, is controlled by, or is under common control with, the first Person, the general partner of such Person, investment manager of such Person or an affiliate of such Person, general partner or investment manager. The term "**control**" (including the terms "controlled by" and "under common control with") means 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 credit arrangement, as trustee or executor, or otherwise.

"**Agreement**" has the meaning specified in the Preamble.

"**Bankruptcy Code**" has the meaning specified in the Recitals.

"**Bankruptcy Court**" has the meaning specified in the Recitals.

"**Black Diamond**" means Boomerang BD Opportunity Fund III Holdings LLC, Boomerang BD Opportunity Fund IV Holdings LLC, and each of their respective Affiliates and other Permitted Transferees.

"**Board**" means the Board of Directors of the Company.

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

"**By-Laws**" has the meaning specified in Section 4.7(a).

"**CEO**" means the chief executive officer of the Company.

"**Charter**" has the meaning specified in Section 4.7(a).

"**Common Stock**" means the common stock, par value $0.01 per share, of the Company, as constituted on the date hereof, any such stock into which such Common Stock shall have changed or any stock resulting from any reclassification of such Common Stock and any shares of any class of the Company's common stock issued with respect to shares of Common Stock by way of stock split, stock dividend or other recapitalization.

"**Company**" has the meaning specified in the Preamble.

"**Competitor**" has the meaning specified in Section 3.2.

"**Condition**" has the meaning specified in Section 4.1(c).

"**Consent**" means any consent, approval, authorization, waiver, permit, grant, franchise, concession, agreement, license, exemption or order of, registration, certificate, declaration or filing with, or report or notice to, any Person.

"**Debt Financing**" has the meaning specified in Section 4.4(g).

"**Debt Financing Right**" has the meaning specified in Section 4.4(g).

"**Debtors**" has the meaning specified in the Recitals.

"**Defaulting Drag-Along Stockholder**" has the meaning specified in Section 4.3(c).

"**Demand Date**" has the meaning specified in Section 5.5(b)(i).

"**Demand Registration**" has the meaning specified in Section 5.5.

"**Drag-Along Purchaser**" has the meaning specified in Section 4.3(a).

"**Drag-Along Sale**" has the meaning specified in Section 4.3(a).

"**Drag-Along Stockholders**" has the meaning specified in Section 4.3(a).

"**Effective Date**" has the meaning specified in the Preamble.

"**Election Period**" has the meaning specified in Section 4.1.

"**Eligible Offering**" has the meaning specified in Section 4.4(c).

"**Equipment Financing**" means any financing entered into by the Company or its Subsidiaries to purchase equipment for the Company's or any of its Subsidiary's businesses, including capital or operating leases provided by the vendors of such equipment or third party financial institutions and commercial lines of credit or loan facilities provided by third party financial institutions to purchase such equipment.

"**Equity Securities**" means any class of capital stock, including the Common Stock or any preferred stock of the Company, however described or whether voting or non-voting, and all securities convertible or exercisable into or exchangeable for or rights to purchase any such capital stock of the Company, if any, including any Equity Security Equivalent and any and all other equity securities of the Company or securities convertible into or exchangeable for such security or issued as a distribution with respect to or in exchange for such securities.

"**Equity Security Equivalent**" means any option, warrant, right, call or similar security or right exercisable into, exchangeable for, or convertible into Equity Securities.

"**Excess Preemptive Securities**" has the meaning specified in Section 4.4(b).

"**Excess Preemptive Stockholder**" has the meaning specified in Section 4.4(b).

"**Exercising Holder**" has the meaning specified in Section 4.1(b).

"**Exchange Act**" means the Securities Exchange Act of 1934, as amended, and the rules and regulations promulgated thereunder.

"**Family Member**" shall mean any person's spouse, minor child, adult child, stepchild, adopted child, brother, sister, parent, adoptive parent, stepparent, stepbrother, stepsister, brother-in-law, sister-in-law, son-in-law, daughter-in-law, father-in-law or mother-in-law.

"**First Offer Notice**" has the meaning specified in Section 4.1.

"**Fundamental Documents**" means the Charter and By-Laws.

"**GAAP**" has the meaning specified in Section 4.5(a)(i).

"**Governmental Authority**" means any international, supranational or national government, any state, provincial, local or other political subdivision thereof; any entity, authority or body exercising executive, legislative, judicial, regulatory or administrative functions of or pertaining to government; any court, tribunal or arbitrator; any self-regulatory organization; or any securities exchange or quotation system.

"**Holder**" has the meaning set forth in Section 5.5.

"**Inclusion Notice**" has the meaning specified in the Section 4.2(c).

"**Initial Public Offering**" means an initial Public Offering commenced by the Company.

"**Intercompany Debt**" shall mean debt of the Company owing to a Subsidiary or debt of a Subsidiary owing to the Company or another Subsidiary.

"**IPO**" means a bona fide sale by the Company of Equity Securities in a public offering registered under the Securities Act which has been approved by the Board.

"**Initiating Holder**" has the meaning specified in Section 5.5.

"**Joinder Agreement**" has the meaning specified in Section 3.2(a).

"**Majority Stockholder**" has the meaning specified in Section 4.7(b).

"**Minority Director**" has the meaning specified in Section 4.7(b)(i)(2).

"**Non-Employee Holders**" has the meaning specified in Section 5.3.

"**Non-Selling Holder**" has the meaning specified in Section 4.1.

"**Non-Transferring Stockholders**" has the meaning specified in Section 4.2.

"**Notice**" has the meaning specified in Section 6.6(a).

"**Notice of Acceptance**" has the meaning specified in Section 4.1(a).

"**Offered Shares**" has the meaning specified in Section 4.1.

"**Offer Price**" has the meaning specified in Section 4.1.

"**Option Period**" has the meaning specified in Section 4.1(a).

"**Oversubscribing Holder**" has the meaning specified in Section 4.1(b).

"**Oversubscription Notice**" has the meaning specified in Section 4.1(b).

"**own**" means to own, hold or otherwise exercise investment discretion over the applicable Equity Securities. The terms "**owner**" and "**ownership**" shall have meanings correlative of the foregoing.

"**Permitted Transfer**" means a Transfer by a Stockholder (a) in the case of a Stockholder that is a natural person, by gift to his or her Family Member or to any entity of which such person or persons are the sole beneficiaries, *provided* that with respect to all such Transfers by a Stockholder to any such Person, voting power of such Equity Securities, if any, is retained by one or more of the natural persons enumerated in this clause (a); (b) in the case of any Stockholder that is a trust, to a successor trustee or trustees of any trust established for one or more of the persons specified in clause (a) above; (c) upon the death of a Stockholder who is a natural person, to such Stockholder's heirs, executors, administrators, testamentary trustees, legatees or beneficiaries; (d) to any Affiliate of such Stockholder (including if consummated in a trade through a financial intermediary), *provided* that such Stockholder and such Permitted Transferee agree for the benefit of the other parties hereto to re-Transfer the subject Equity Securities back to such Stockholder prior to such Permitted Transferee ceasing to be an Affiliate of such Stockholder; (e) in the case of any Stockholder that is an investment fund, to the limited or general partners or members of such fund, (f) in the case of the winding up or liquidation of a Stockholder other than a natural person, to its Affiliates or (g) as approved by the Board.

"**Permitted Transferee**" means the transferee in a Permitted Transfer.

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

"**Plan**" has the meaning specified in the Recitals.

"**Plan Support Agreement**" means that certain Plan Support Agreement, dated as of June 8, 2015 by and among the Debtors, Cortland Capital Market Services LLC, Wells Fargo Capital Finance, LLC, Access Tubulars, LLC, and any other parties thereto, as amended in accordance with its terms.

"**Preemptive Maximum**" has the meaning specified in Section 4.4(b).

"**Preemptive Notice**" has the meaning specified in Section 4.4(d).

"**Preemptive Notice Period**" has the meaning specified in Section 4.4(d).

"**Preemptive Percentage Allocation**" has the meaning specified in Section 4.4(a).

"**Preemptive Purchase Notice**" has the meaning specified in Section 4.4(d).

"**Preemptive Right**" has the meaning specified in Section 4.4(a).

"**Preemptive Right Holder**" has the meaning specified in Section 4.4(a).

"**Preemptive Securities**" has the meaning specified in Section 4.4(a).

"**Primary Shares**" means the authorized but unissued equity securities of the Company which are being offered in a Public Offering or any of such securities which are held in treasury of any of the foregoing (as applicable).

"**Pro Rata Offered Shares**" has the meaning specified in Section 4.1(a).

"**Pro Rata Oversubscription Shares**" has the meaning specified in Section 4.1(b).

"**Proposed Purchaser**" has the meaning specified in Section 4.2.

"**Proprietary Information**" has the meaning specified in Section 5.1.

"**Public Offering**" means the completion of a public sale of equity securities pursuant to a registration statement which has become effective under the Securities Act, or pursuant to a registration statement, prospectus or similar document which has been filed in accordance with and/or become effective under the laws of any jurisdiction outside of the United States or otherwise pursuant to and in compliance with the laws of a jurisdiction outside of the United States, excluding in any event a registration form, prospectus or similar document relating solely to employee benefit plans or which does not permit secondary sales and in the case of any registration statement under the Securities Act, which does not include substantially the same information as would be required in a Form S-1 or S-3 Registration Statement (or any successor forms) covering Public Offering Securities.

"**Public Offering Securities**" means the equity securities of the Company to be sold in a Public Offering.

"**Remaining Shares**" has the meaning specified in Section 4.1(b).

"**Reorganized Borrower**" means Boomerang Tube, LLC as of the Effective Date.

"**Rule 144**" means Rule 144 under the Securities Act.

"**Rule 144 Transaction**" means a Transfer of Public Offering Securities complying with Rule 144 as such rules or successors thereto are in effect on the date of such Transfer.

"**SEC**" means the Securities and Exchange Commission or any other federal agency at the time administering the Securities Act.

"**Securities Act**" means the Securities Act of 1933, as amended, and the rules and regulations promulgated thereunder.

"**Selling Percentage**" has the meaning specified in Section 4.2.

"**Selling Stockholder**" has the meaning specified in Section 4.1.

"**Senior Secured Notes Claims**" has the meaning specified in the Plan.

"**Stockholders**" has the meaning specified in the Recitals.

"**Stockholder Representations**" has the meaning specified in Section 4.2(d).

"**Subject Securities**" has the meaning specified in Section 4.2.

"**Subsidiaries**" means any other Person (a) in which the Company owns, directly or indirectly, fifty percent (50%) or more of the securities or other ownership interests of such other Person, (b) in which the Company owns, directly or indirectly, securities or other ownership interests having ordinary voting power to elect a majority of the board of managers/directors, or other persons performing similar functions, of such other Person or (c) the management of which is otherwise controlled, directly or indirectly, by the Company.

"**Supermajority**" has the meaning specified in Section 4.6.

"**Supermajority Stockholders**" has the meaning specified in Section 4.3(a).

"**Tag-Along Election Period**" has the meaning specified in Section 4.2(a).

"**Tag-Along Holder**" has the meaning specified in Section 4.2(a).

"**Tag-Along Notice**" has the meaning specified in Section 4.2.

"**Tag-Along Notice of Election**" has the meaning specified in Section 4.2(a).

"**Tag-Along Securities**" has the meaning specified in Section 4.2(a).

"**Third-Party**" has the meaning specified in Section 4.1(d).

"**Third-Party Shares**" has the meaning specified in Section 4.1(d).

"**Third-Party Transfer Closing Date**" has the meaning specified in Section 4.1(e).

"**Transactions**" means the transactions contemplated by this Agreement and any respective ancillary agreements thereto.

"**Transfer**" means any sale, transfer, assignment, conveyance or other disposition, including by merger, operation of law, bequest or pursuant to any domestic relations order, whether voluntarily or involuntarily, other than a sale, transfer, assignment, conveyance or other disposition by or to the Company; *provided* that a sale, transfer, assignment, conveyance or other disposition, including by merger, operation of law, bequest or pursuant to any domestic relations order, whether voluntarily or involuntarily, of the partnership or membership interests of any fund advised by a Stockholder or its Affiliates shall not constitute a Transfer hereunder; *provided, however*, the term Transfer shall also include indirect Transfers by a Stockholder if the Company's Equity Securities constitute a majority of the assets (directly or indirectly) of the entity whose equity is being transferred.

"**Transfer Closing Date**" has the meaning specified in Section 4.2(e).

"**Transferee**" means any Person who acquires Equity Securities from a Stockholder and who is not a Permitted Transferee.

"**Transferring Stockholder**" has the meaning specified in Section 4.2.

"**Voting Securities**" means, at any time, any class of Equity Securities of the Company which are then entitled to vote generally in the election of directors or on any other matter.

Section 1.2 Headings; Table of Contents

Headings and table of contents should be ignored in constructing this Agreement.

Section 1.3 Singular, Plural, Gender

References to one gender include all genders and references to the singular include the plural and vice versa.

Section 1.4 Exhibits and Recitals

References to this Agreement shall include any Exhibits, Annexes and Recitals and references to Sections, Annexes and Exhibits are to Sections of and Exhibits and Annexes to this Agreement.

Section 1.5 Information

References to books, records or other information mean books, records or other information in any form including paper, electronically stored data, magnetic media, film and microfilm.

Section 1.6 Interpretation

Whenever the words "**include**," "**includes**" or "**including**" are used in this Agreement, they shall be deemed to be followed by the words "**without limitation**." This Agreement shall be construed as if it is drafted by all the parties hereto and no presumption or burden of proof will arise favoring or disfavoring any party by virtue of authorship of any of the provisions of this Agreement if an ambiguity or question of intent or interpretation arises. If the last day of performance of any obligation hereunder is not a Business Day, then the deadline for such performance or the expiration of the applicable period or date shall be extended to the next Business Day. Any voting or other shareholder thresholds referenced in this Agreement shall be without reference to or dilution by any equity granted pursuant to employee or management incentive plans.

Section 1.7 Calculation of Ownership Percentages

All Stockholder ownership percentages of the outstanding Common Stock shall be calculated for purposes of this Agreement without regard to any dilution from Common Stock issued or granted in accordance with the terms of any equity option or equity purchase plan or agreement or other benefit or management incentive plans approved by the Board.

ARTICLE II

REPRESENTATIONS AND WARRANTIES

Each of the parties hereby severally (and not jointly) represents and warrants to each of the other parties as follows:

Section 2.1 Authority; Enforceability

Such party has the legal capacity or full power and authority (corporate or otherwise) to execute and deliver this Agreement and to perform its obligations hereunder. Such party (in the case of parties that are not natural persons) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation, formation or organization, and the execution of this Agreement and the consummation of the transactions contemplated herein have been duly and validly authorized by all necessary action. No other act or proceeding, corporate or otherwise, on its part is necessary to authorize the execution and delivery of this Agreement or the consummation of any of the transactions contemplated hereby. This Agreement has been duly executed by such party and constitutes its legal, valid and binding obligation, enforceable against it in accordance with the terms of this Agreement, subject to applicable bankruptcy, insolvency, reorganization, moratorium, fraudulent conveyance and other laws relating to or affecting the rights of creditors generally and to the exercise of judicial discretion in accordance with general principles of equity (whether applied by a court of law or of equity).

Section 2.2 No Breach

Neither the execution of this Agreement nor the performance by such party of its obligations hereunder nor the consummation of the transactions contemplated hereby does or will:

(a) in the case of parties that are not natural persons, violate or conflict with its certificate of incorporation, bylaws or other organizational documents;

(b) violate, conflict with or result in the breach or termination of, or otherwise give any other person the right to accelerate, renegotiate or terminate or receive any payment or constitute a default or an event of default (or an event which with notice, lapse of time, or both, would constitute a default or event of default) under the terms of any material contract or agreement to which it is a party or by which it or any of its assets or operations are bound or affected; or

(c) constitute a violation by such party of any laws, rules or regulations of any governmental, administrative or regulatory authority or any judgments, orders, rulings or awards of any court, arbitrator or other judicial authority or any Governmental Authority.

Section 2.3 Consents

No Consent is required to be made or obtained by such party, other than those which have been made or obtained, in connection with (a) the execution or enforceability of this Agreement or (b) the consummation of any of the Transactions.

ARTICLE III

SECURITY TRANSFERS

Section 3.1 Restrictions on Transfer

During the term of this Agreement, each Stockholder agrees that it will not Transfer any Equity Security, except as permitted by or in accordance with this Agreement.

Section 3.2 Permitted Transfers

Subject to all applicable laws, the following Transfers are permitted:

(a) (i) a Transfer that is a Permitted Transfer of Equity Securities by a Stockholder to one or more of its Permitted Transferees or (ii) a Transfer by a financial intermediary to a Preemptive Right Holder or its Affiliate as contemplated by Section 4.4(i) hereof; *provided* that, if not already a party hereto, any such Permitted Transferee or Transferee executes and delivers to the Company a Joinder Agreement substantially in the form of Exhibit A hereto (a "**Joinder Agreement**"); *provided*, *further*, *however*, that notwithstanding anything to the contrary contained in this Agreement, no Person acting as a financial intermediary as contemplated by clause (d) of the definition of "**Permitted Transfer**" shall be required to execute a Joinder Agreement in connection with acting in such capacity;

(b) a Transfer of Equity Securities by a Stockholder as a Tag-Along Holder in accordance with Section 4.2 or a Transfer in accordance with Section 4.3;

(c) a Transfer of Equity Securities by a Stockholder to any other Person so long as the Transferee executes and delivers to the Company a Joinder Agreement; *provided* that if Section 4.1 is complied with and Section 4.2 is applicable to such Transfer, the Transfer must also comply with the provisions of Section 4.2 to the extent such Transfer is to a third party;

(d) a Transfer of Equity Securities by a Stockholder in an IPO or pursuant to an effective registration statement under the Securities Act; or

(e) a Transfer (including by way of repurchase or redemption) of Equity Securities to the Company.

Notwithstanding anything to the contrary contained herein: (i) no Equity Securities shall be Transferred (other than pursuant to Section 3.2(b) or (d)) if, upon consummation of such Transfer, the Company would be required by the Securities Act or the Exchange Act, including Section 12(g) of the Exchange Act, or any other foreign, federal, state or local securities laws to register any class of its Equity Securities with the SEC or other similar regulatory authority or to file periodic reports under Section 13 of the Exchange Act or other similar regulatory authority by virtue of such Transfer and (ii) no Equity Securities shall be Transferred (other than pursuant to Section 3.2(b) or (d)) to any Person that the Board in good faith determines is a competitor of the Company or any of its Subsidiaries (a "**Competitor**"). The Stockholder shall provide the Company with any information reasonably requested by the Company in order to facilitate the confirmation by the Company that the Transfer is in accordance with this Agreement.

Section 3.3 Improper Transfer

Any attempt to Transfer any Equity Securities not in accordance with this Agreement shall be null and void *ab initio* and the Company will not give nor permit the Company's transfer agent to give any effect to such attempted Transfer in its records.

Section 3.4 Restrictive Legend

Each certificate, if issued, representing Equity Securities and held by a Stockholder will bear a legend substantially similar to the following (with such additions thereto or changes therein as the Company may be advised by counsel are required by law or necessary to give full effect to this Agreement):

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [●] PURSUANT TO THE AMENDED JOINT PREARRANGED CHAPTER 11 PLAN OF BOOMERANG TUBE, LLC AND CERTAIN OF ITS SUBSIDIARIES, DATED AS OF AUGUST 13, 2015 AND CONFIRMED BY THE BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, ON [●], 2015. THESE SECURITIES WERE ISSUED PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED, (THE "ACT") PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. § 1145, AND HAVE NOT BEEN REGISTERED UNDER THE ACT OR ANY APPLICABLE STATE SECURITIES LAW, AND TO THE EXTENT THAT THE HOLDER OF THESE SECURITIES IS AN "UNDERWRITER" AS DEFINED IN SECTION 1145(B)(1) OF THE BANKRUPTCY CODE, THESE SECURITIES MAY NOT BE TRANSFERRED, OFFERED, ASSIGNED, SOLD, DONATED, PLEDGED, HYPOTHECATED, ENCUMBERED OR OTHERWISE DISPOSED OF UNLESS (I) THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR SUCH APPLICABLE STATE SECURITIES LAWS OR (II) REGISTRATION UNDER THE ACT OR SUCH APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED IN CONNECTION WITH SUCH TRANSFER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE CANNOT BE TRANSFERRED IN A TRANSACTION WHICH WOULD CAUSE THE COMPANY TO BE SUBJECT TO THE REPORTING REQUIREMENTS OF THE EXCHANGE ACT.
>
> THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO (I) SIGNIFICANT RESTRICTIONS ON THE TRANSFER PURSUANT TO THE COMPANY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION AND (II) THE TERMS AND CONDITIONS OF A STOCKHOLDERS AGREEMENT DATED AS OF [●], 2015. THE STOCKHOLDERS AGREEMENT CONTAINS, AMONG OTHER THINGS, SIGNIFICANT RESTRICTIONS ON TRANSFER OF THE SECURITIES OF THE COMPANY. COPIES OF THE COMPANY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION AND

THE STOCKHOLDERS AGREEMENT ARE ON FILE AT THE OFFICE OF THE COMPANY AND WILL BE FURNISHED WITHOUT CHARGE TO THE HOLDER OF SUCH SECURITY UPON WRITTEN REQUEST.

Section 3.5 Certificates

Subject to the limitations on Transfer set forth in this Agreement, certificates representing Equity Securities shall be transferable or interchangeable upon presentation at the office of the Company or its transfer agent, if any, properly endorsed or accompanied by an instrument of transfer and executed by the Stockholder or his or her authorized attorney, together with the payment of any tax or governmental charges imposed upon the Transfer of any such certificates.

ARTICLE IV

RIGHTS OF CERTAIN STOCKHOLDERS

Section 4.1 Right of First Offer

In the event that a Stockholder desires to Transfer all or part of its Equity Securities (the "**Offered Shares**"), other than pursuant to Section 3.2(a), (b), (d) or (e), such Stockholder (for purposes of this Section 4.1, such Stockholder shall be referred to as the "**Selling Stockholder**") shall give prompt written notice (a "**First Offer Notice**") to each non-selling Stockholder that holds more than five percent (5%) of the outstanding Common Stock (each, a "**Non-Selling Holder**") of its desire to sell the Offered Shares. The Selling Stockholder agrees not to consummate any such Transfer until the expiration of the twenty (20) Business Day period commencing on the date the First Offer Notice has been delivered to the Non-Selling Holders and the Selling Stockholder has complied with Section 4.2, if applicable (the "**Election Period**"), unless the parties to the Transfer have been fully determined pursuant to this Article IV prior to the expiration of such twenty (20) Business Day period. The First Offer Notice shall identify (i) the number and type of Offered Shares, (ii) the purchase price per share at which the Selling Stockholder wishes to sell and form of consideration (the "**Offer Price**"), (iii) the identity of the proposed Transferee, if known, and (iv) all other material terms and conditions of the proposed Transfer.

(a) For a period of seven (7) Business Days (the "**Option Period**") following the receipt of the First Offer Notice, each Non-Selling Holder shall have the right and option (but not the obligation) to purchase, at the Offer Price and on the same terms and conditions as set forth in the First Offer Notice, up to such portion of the Offered Shares (each Non-Selling Holder's "**Pro Rata Offered Shares**") that equals the product of (i) the number of Offered Shares times (ii) a fraction, the numerator of which is the number of shares of such type of Equity Securities included in the Offered Shares held by such Non-Selling Holder, and the denominator of which is the sum of all shares of such type of Equity Securities included in the Offered Shares held by all Non-Selling Holders. The rights of each Non-Selling Holder set forth in this Section 4.1(a) are exercisable by delivery, within the Option Period, by such Non-Selling Holder of an irrevocable written notice to the Selling Stockholder (the "**Notice of Acceptance**") of such Non-Selling Holder's commitment to purchase all or a portion of its Pro Rata Offered Shares (such Non-Selling Holder's "**Accepted Shares**"). Failure by any Non-Selling Holder to give the

Notice of Acceptance within the Option Period shall be deemed an election by such Non-Selling Holder not to purchase its Pro Rata Offered Shares.

(b) Each Non-Selling Holder that delivers, within the Option Period, a Notice of Acceptance (an "**Exercising Holder**") specifying its election to purchase all of its Pro Rata Offered Shares, shall also have the right to purchase, at the Offer Price, a portion (its "**Pro Rata Oversubscription Shares**") of the Offered Shares that the other Non-Selling Holders have elected not to purchase, if any (the "**Remaining Shares**") (any Exercising Holder exercising its right to purchase its Pro Rata Oversubscription Shares is referred to as an "**Oversubscribing Holder**"). An Oversubscribing Holder's Pro Rata Oversubscription Shares shall equal the product of (i) the Remaining Shares *times* (ii) a fraction, the numerator of which is the number of shares of such type of Equity Securities included in the Remaining Shares held by such Oversubscribing Holder prior to its acquisition of any Offered Shares, and the denominator of which is the aggregate number of shares of such type of Equity Securities included in the Remaining Shares held by all Oversubscribing Holders prior to their acquisition of any Offered Shares. The Company shall deliver a notice to all Exercising Holders and to all Non-Selling Holders who do not own the type of Equity Securities included in the Offered Shares of the number of Remaining Shares as promptly as practicable following the date upon which such Remaining Shares are known. Each Exercising Holder shall, if it desires to do so, become an Oversubscribing Holder by specifying in the prior Notice of Acceptance or another irrevocable written notice (each such notice delivered by an Oversubscribing Holder, an "**Oversubscription Notice**") to the Selling Stockholders its election to purchase its Pro Rata Oversubscription Shares prior to the expiration of the Election Period. This procedure will be repeated until elections to purchase all of the Offered Shares have been exercised or each of the Oversubscribing Holders no longer desires to exercise its right to purchase any more shares. If all Offered Shares are not purchased pursuant to the foregoing procedure by the Non-Selling Stockholders holding the same type of Equity Securities included in the Offered Shares, or if no Non-Selling Holder holds the same type of Equity Securities included in the Offered Shares, the Non-Selling Holders who do not own the type of Equity Securities included in the Offered Shares shall be entitled to purchase any Offered Shares that have not been elected to be purchased in the same manner as the Pro Rata Oversubscription Shares but substituting Common Stock in the numerator and denominator for the type of Equity Securities held.

(c) If any Non-Selling Holder has elected to purchase Offered Shares hereunder, the Transfer of such Offered Shares shall be consummated as soon as practical, and the parties will in good faith negotiate the sale agreement after the delivery of the Notice of Acceptance and/or Oversubscription Notice(s), if any, to the Selling Stockholder, but in any event within forty-five (45) days after the expiration of the Election Period, subject to receipt of any required material third party or governmental approvals, compliance with applicable laws and the absence of any injunction or similar legal order preventing such transaction (collectively, the "**Conditions**"), in which case the purchase of the Accepted Shares and the Pro Rata Oversubscription Shares, as applicable, shall be delayed pending the satisfaction of the Conditions up to an additional ninety (90) days. The Selling Stockholder, the Exercising Holder and the Oversubscribing Holder, as applicable, shall be obligated to use commercially reasonable efforts to satisfy the Conditions as soon as possible.

(d) If all notices required to be given pursuant to this Section 4.1 have been duly given, and the Non-Selling Holders have not elected to purchase all of the Offered Shares at the Offer Price and on the same terms and conditions as set forth in the First Offer Notice, or any purchases of Pro Rata Offered Shares or Pro Rata Oversubscription Shares, as applicable, agreed to by any Exercising Holders or Oversubscribing Holders, as applicable, are not consummated in accordance with Section 4.1(c) (and any such failures to consummate are not as a result of any breach hereof by the Selling Stockholder), then the Selling Stockholder shall have the right, subject to Section 4.2, to enter into and consummate, subject to Section 4.1(e), an agreement to sell to a third-party not Affiliated with any Stockholder (a "**Third-Party**") the Offered Shares remaining unsold under this Section 4.1 (the "**Third-Party Shares**") at a price not less than the Offer Price and on terms and conditions no less favorable to the Selling Stockholder, economically or otherwise, than as set forth in the First Offer Notice; *provided* that simultaneously with any such Transfer to a Third-Party, such Third-Party executes and delivers to the Company, for the benefit of the Company and all Stockholders, a Joinder Agreement. If the sale to a Third-Party is not consummated pursuant to the terms of the immediately preceding sentence and within the time periods described in the next paragraph (e), the Selling Stockholder will not effect the Transfer of any of the Offered Shares without commencing *de novo* the procedures set forth in this Section 4.1.

(e) The closing of the sale of any Third-Party Shares that are being Transferred under this Section 4.1 to any Third-Party shall take place at the Company's principal executive offices (or such other place as the Selling Stockholder and the applicable purchaser shall agree) on a date (the "**Third-Party Transfer Closing Date**") no later than the earlier of (i) the fifth (5th) Business Day following the expiration or termination of all waiting periods applicable to such Transfers under the Hart-Scott-Rodino Antitrust Improvements Act of 1976, if any, or the receipt of any other required Consent from any Governmental Authority and (ii) one-hundred eighty (180) days following the date of delivery of the First Offer Notice (or if such date is not a Business Day, the first day thereafter that is a Business Day) at 10:00 a.m., local time. On the Transfer Closing Date, the parties shall take all actions necessary (including cooperation in obtaining any required governmental Consents) to convey such shares of Equity Securities to be transferred in accordance with this Agreement, free of all liens and encumbrances, other than pursuant to this Agreement and under the Charter.

Section 4.2 Tag-Along Rights

If a Stockholder or group of Stockholders (the "**Transferring Stockholder**"), proposes to Transfer (other than pursuant to Section 3.2(a), (b), (d) or (e) or pursuant to Section 4.1(c)) an aggregate of more than ten percent (10%) of the issued and outstanding Common Stock in one or a series of related transactions (the "**Subject Securities**") to a Person or group of affiliated Persons (the "**Proposed Purchaser**"), the Transferring Stockholder shall give written notice (a "**Tag-Along Notice**") of such proposed Transfer to the other Stockholders who hold Common Stock (collectively, the "**Non-Transferring Stockholders**"), at least thirty (30) days prior to the consummation of such proposed Transfer, setting forth (i) the total number of shares of Common Stock offered to be Transferred to the Proposed Purchaser and the percentage (rounded to the nearest one hundredth of a percent) of the Transferring Stockholder's Common Stock that constitutes the Subject Securities (such percentage, the "**Selling Percentage**"), (ii) the amount and form of consideration to be received for such Common Stock by the Transferring

Stockholder, (iii) the identity of the Proposed Purchaser, if known, and the Transferring Stockholder(s), (iv) all other material terms and conditions of the proposed Transfer, including the form of proposed agreement (if completed at the time that the Tag-Along Notice is provided), (v) the expected date of the proposed Transfer and (vi) that each such Non-Transferring Stockholder shall have the right to elect to sell up to a percentage of such Non-Transferring Stockholder's Common Stock equal to the applicable Selling Percentage to the Proposed Purchaser at the same price and on the same terms as described in the Tag-Along Notice relating to such Transfer.

(a) Upon delivery of a Tag-Along Notice, each Non-Transferring Stockholder has the option (but not the obligation) to sell up to the applicable Selling Percentage held by it at the same price per security of such Subject Security and pursuant to the same terms and conditions with respect to payment for such Subject Security as agreed to by the Transferring Stockholder, by sending written notice (a "**Tag-Along Notice of Election**") to the Transferring Stockholder within twenty (20) Business Days following the receipt of the Tag-Along Notice (the "**Tag-Along Election Period**"), indicating the number of shares of Common Stock it elects to sell up to the applicable Selling Percentage held by it (its "**Tag-Along Securities**") in the same transaction (a "**Tag-Along Holder**"). Failure by any Non-Transferring Stockholder to provide a Tag-Along Notice of Election within the Tag-Along Election Period shall be deemed an election by such Non-Transferring Stockholder to not sell any Tag-Along Securities in such transaction.

(b) If one or more Non-Transferring Stockholders elects to participate and become a Tag-Along Holder by delivering a Tag-Along Notice of Election prior to the expiration of the Tag-Along Election Period, the Transferring Stockholder shall use all reasonable efforts to cause the Proposed Purchaser to agree to acquire all of the Subject Securities and each such Tag-Along Holder's Tag-Along Securities, upon the same terms and conditions set forth in the Tag-Along Notice. If the Proposed Purchaser is unwilling or unable to acquire all of such Common Stock upon such terms, then the Transferring Stockholder may elect either to cancel such Transfer or to proceed with such Transfer by reducing the number of Subject Securities and aggregate Tag-Along Securities such that the total number of Subject Securities to be sold by the Transferring Stockholder and the aggregate number of Tag-Along Securities to be sold by all Tag-Along Holders does not collectively exceed the total number of shares of Common Stock that the Proposed Purchaser is willing to purchase. Specifically, pursuant to the preceding sentence, the Transferring Stockholder and each Tag-Along Holder shall be entitled to Transfer the number of shares of Common Stock derived by multiplying the number of shares of Common Stock the Proposed Purchaser is willing to purchase on such terms by a fraction, the numerator of which is (x) in the case of the Transferring Stockholder, the number of shares included in the Subject Securities and (y) in the case of a Tag-Along Holder, the number of shares included in the Tag-Along Securities of such Tag-Along Holder, and the denominator of which is the sum of (A) the number of shares included in the Subject Securities, plus (B) the aggregate number of shares included in the Tag-Along Securities of all Tag-Along Holders. The Tag-Along Holder may sell Common Stock included as Subject Securities.

(c) Within five (5) days after the expiration of the Tag-Along Election Period, the Transferring Stockholder shall notify each Tag-Along Holder in writing (the "**Inclusion Notice**") of the number of shares of Common Stock held by such Tag-Along Holder that will be included in the Transfer in accordance with Section 4.2(b) and the date on which the Transfer is

anticipated to be consummated, which shall be no earlier than the date that is twenty (20) Business Days after the date of delivery of the Tag-Along Notice.

(d) Each Tag-Along Holder electing to Transfer any or all of its Common Stock pursuant to this Section 4.2 shall deliver to the Proposed Purchaser, or to the Transferring Stockholder for delivery to the Proposed Purchaser, the certificates, if issued, representing such Tag-Along Holder's Common Stock to be Transferred in genuine and unaltered form, duly endorsed in blank or accompanied by duly executed transfer powers in blank, with all requisite transfer stamps, if any, attached thereto or other instruments sufficient to Transfer such Common Stock. In addition, the right of each Tag-Along Holder to participate in such Transfer shall be conditioned upon such Tag-Along Holder's execution of such documents and agreements as the Proposed Purchaser may require; *provided however*, that the terms of such documents and agreements shall be no more onerous than (and in all cases substantially similar to) those set forth in the documents and agreements to be executed by the Transferring Stockholder in connection with the Transfer; *provided further*, that no Tag-Along Holder shall be required to indemnify the Proposed Purchaser for an aggregate amount in excess of the lesser of (x) the total consideration received by such Tag-Along Holder in connection with such Transfer and (y) except as to any customary representations with respect to itself as to organization, authorization, enforceability, capitalization, ownership of the Common Stock being Transferred by it, and the non-contravention of its organizational documents or material agreements (collectively, the "**Stockholder Representations**") (as to which the limit in clause (x) shall apply), that portion of the total liabilities that equals the proportion of the total consideration received by such Tag-Along Holder relative to the total consideration received by all Stockholders in such Transfer. In addition, the Tag-Along Holder shall not be required to make any representations or warranties other than the Stockholder Representations with respect to itself which shall be made severally by each Tag-Along Holder and not jointly, and any indemnification to be provided by any Tag-Along Holder as well as any costs and expenses of the Transferring Stockholder in connection with the proposed transaction shall be borne by the Transferring Stockholder and the Tag-Along Holders participating in the sale on a *pro rata* basis (several and not joint) in accordance with each seller's proportion of the total consideration received or receivable by all sellers in the sale, except for indemnification in connection with the Stockholder Representations provided by such Tag-Along Holder with respect to itself which will be provided solely by such Tag-Along Holder.

(e) All Transfers of Common Stock to the Proposed Purchaser pursuant to this Section 4.2 shall be consummated contemporaneously on a date (the "**Transfer Closing Date**") no later than one-hundred eighty (180) days following the date of delivery of the Tag-Along Notice (or if such date is not a Business Day, the first day thereafter that is a Business Day) at 10:00 a.m., local time. The delivery of certificates, if issued evidencing such Subject Securities and Tag-Along Securities, respectively, duly endorsed for transfer, or similar instruments sufficient to effect the Transfer of such Common Stock shall be made on such date against payment of that portion of the sale proceeds to which the Transferring Stockholder and each Tag-Along Holder, respectively, is entitled by reason of its participation in the Transfer.

(f) In the event that no Non-Transferring Stockholder elects to sell Common Stock pursuant to this Section 4.2, the Transferring Stockholder shall have the right to consummate the Transfer of the Subject Securities to the Proposed Purchaser until the Transfer Closing Date, at a

price not greater than the price contained in, and otherwise on terms and conditions no more favorable to the Transferring Stockholder, economically or otherwise, than those set forth in, the Tag-Along Notice; it being agreed that, if the Transferring Stockholder does not consummate a Transfer of the Subject Securities prior to or on the Transfer Closing Date, the Transferring Stockholder will not effect any Transfer of any of the Subject Securities without commencing de novo the procedures set forth in this Section 4.2.

Section 4.3 Drag-Along Rights

(a) If Stockholders holding, in the aggregate, more than sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of Common Stock of the Company (the "**Supermajority Stockholders**") propose to Transfer more than sixty-six and two-thirds percent (66 2/3%) of the outstanding Common Stock, merge the Company with or into another entity or sell of all or substantially all of the assets of the Company (whether through merger or otherwise), in each case, to any third party or group of affiliated third parties (the "**Drag-Along Purchaser**") that is not an Affiliate of any of the Supermajority Stockholders (a "**Drag-Along Sale**"), and provides the notice below, each Stockholder (the "**Drag-Along Stockholders**") shall participate in the Drag-Along Sale in accordance with this Section 4.3. Subject to the provisions of Section 4.3(b), each Drag-Along Stockholder shall consent and raise no objections to a Drag-Along Sale and, if the Drag-Along Sale is structured as a Transfer of Equity Securities, agree to Transfer, and shall Transfer, the proportional amount or all of such Drag-Along Stockholder's Equity Securities on the terms and conditions (including escrow or indemnification provisions) approved by the Supermajority Stockholders; *provided*, that any Equity Security Equivalents required to be Transferred pursuant to this Section 4.3 shall be deemed converted into Common Stock or other Equity Securities, as the case may be, in accordance with the terms thereof (after giving effect to any adjustments to the exercise or conversion price or number of securities acquirable upon exercise, conversion or exchange thereof, as the case may be, that occur or would occur prior to or upon the consummation of such Drag-Along Sale in accordance with the terms of such Equity Security Equivalents) and the number of shares of Common Stock or other Equity Securities, as the case may be, issued in respect thereof shall be reduced by the number of securities having a value as determined in accordance with the terms thereof equal to any exercise price payable by the Holder thereof in connection with such conversion, and if such Equity Security Equivalents have no value they shall be deemed cancelled without any payment. No Drag-Along Stockholder will exercise any dissenters' rights, rights of appraisal or other similar rights that it may have under applicable law in connection with, or take any action to impede or otherwise interfere with, a Drag-Along Sale. Each Drag-Along Stockholder shall use reasonable best efforts to take all necessary actions in connection with the consummation of the Drag-Along Sale as are reasonably requested by the Supermajority Stockholders or the Drag-Along Purchaser.

(b) The obligations of the Drag-Along Stockholders set forth in this Section 4.3 are subject to satisfaction of the following conditions: (i) upon the consummation of a Drag-Along Sale, (A) the Drag-Along Stockholders will each receive the same form and amount of consideration per one security of each type of Equity Security held in common by such Supermajority Stockholders and such consideration shall be paid to each of the Drag-Along Stockholders at the same time and (B) the Drag-Along Stockholders shall not be obligated to receive consideration other than in cash, debt obligations and equity in issuers that are taxed as C

corporations; (ii) if any Drag-Along Stockholder is given an option as to the form and/or amount of consideration to be received, all Drag-Along Stockholders shall be given the same option; (iii) no Drag-Along Stockholder shall be required to indemnify the Drag-Along Purchaser for an aggregate amount in excess of the lesser of (A) the total consideration received by such Drag-Along Stockholder in connection with such Drag-Along Sale and (B) except as to any Stockholder Representation with respect to itself (as to which the limit in (A) shall apply), that proportion of the total liabilities that equals the proportion of the total consideration received by such Drag-Along Stockholder relative to the total consideration received by all Drag-Along Stockholders in such Drag-Along Sale; (iv) any indemnification to be provided by any Drag-Along Stockholder as well as any costs and expenses of the Company and the Supermajority Stockholders in connection with the proposed transaction shall be borne by the Supermajority Stockholders and the Drag-Along Stockholders on a *pro rata* basis (several and not joint) in accordance with each seller's proportion of the total consideration received or receivable by all sellers in the Drag-Along Sale, except for indemnification in connection with Stockholder Representations provided by such Drag-Along Stockholder with respect to itself which will be provided solely by such Drag-Along Stockholder; (v) no Drag-Along Stockholder shall be required to make any representations other than the Stockholder Representations with respect to itself which shall be made severally by each Drag-Along Stockholder and not jointly and (vi) no Stockholder shall be required to agree to a non-compete in connection with the transaction but may be required to agree to a customary non-solicitation of employees and/or customers of the Company and its Subsidiaries.

(c) If the Supermajority Stockholders elect to designate the sale a Drag-Along Sale, they shall deliver a written notice to the Company so stating. Promptly upon such designation, the Company shall deliver a notice to each Drag-Along Stockholder setting forth the material terms of the Drag-Along Sale (including the proposed closing date for its consummation, which shall not be less than fifteen (15) Business Days from the receipt of such notice) and shall deliver when available all documents reasonably required to be executed by each Drag-Along Stockholder to consummate such Drag-Along Sale. Each Drag-Along Stockholder shall execute and deliver to the Company at least three (3) Business Days prior to the proposed closing date referred to above, all documents previously furnished to such Drag-Along Stockholder for execution in connection with the Drag-Along Sale. If any Drag-Along Stockholder fails to execute and deliver such documents to the Company, and such Drag-Along Sale is subsequently consummated (such Drag-Along Stockholder, a "**Defaulting Drag-Along Stockholder**"), (i) the Company may establish an escrow account for the consideration that would otherwise be paid to the Defaulting Drag-Along Stockholder and the Defaulting Drag-Along Stockholder shall be deemed to have appointed any member of the Board as such Drag-Along Stockholder's agent to Transfer all of its Equity Securities proposed to be included in the Drag-Along Sale to the Drag-Along Purchaser and to receive the consideration in trust for such Defaulting Drag-Along Stockholder, (ii) the receipt by the escrow agent of the consideration for such Equity Securities owned by such Defaulting Drag-Along Stockholder shall be a good discharge to the Drag-Along Purchaser and after its name has been entered into the records of the Company in purported exercise of the power, the validity of the proceedings shall not be questioned by any Person and (iii) the Defaulting Drag-Along Stockholder shall be bound to deliver to the Company certificates, if issued, representing such Equity Securities or a similar instrument sufficient to effect the Transfer of such Equity Securities and on such delivery shall be entitled to receive the consideration therefor without interest.

(d) Each Stockholder affirms that its agreement to vote for the approval of and participate in such Drag-Along Sale is given as a condition to its ownership of the Equity Securities and as such is coupled with its interest and is irrevocable.

(e) Without intending to limit the remedies available to any party hereto, if the Company or any Drag-Along Stockholder (other than a Defaulting Drag-Along Stockholder) brings an action against a Defaulting Drag-Along Stockholder to enforce the provisions of this Section 4.3, and such Defaulting Drag-Along Stockholder is found to have breached this Agreement, the Defaulting Drag-Along Stockholder shall pay all reasonable legal fees and disbursements incurred by the party or parties that brought such action.

Section 4.4 Preemptive Rights

(a) The Company hereby grants to each Stockholder that holds Common Stock, in each case that is an "accredited investor" as defined in Rule 501 promulgated under the Securities Act (other than Holders of Common Stock issued pursuant to any management or employee equity incentive plan) (the "**Preemptive Right Holders**"), and/or, at such party's election, one or more of its Affiliates (which Affiliate(s) shall (if not already parties hereto), prior to receiving any Preemptive Securities pursuant to this Section 4.4, agree in writing to be bound by, and shall be a party to, this Agreement and which Affiliate(s) shall also be an "accredited investor" as defined in Rule 501 promulgated under the Securities Act) the right (the "**Preemptive Right**") to purchase any or all of the Equity Securities and Equity Security Equivalents and debt securities, and any option, warrant, right, call or similar security or right exercisable into, exchangeable for, or convertible into the same, proposed to be issued by the Company ("**Preemptive Securities**") in any Eligible Offering, subject to cutback as set forth below; *provided* that, with respect to each particular Eligible Offering, any Preemptive Right Holder electing to exercise its Preemptive Right must subscribe in an equal proportion to the entirety of such Preemptive Securities offered if such Preemptive Securities have multiple components, including any combination of debt securities, Common Stock and/or preferred stock. Each Preemptive Right Holder electing to exercise its Preemptive Right will be entitled to purchase up to that portion of the Preemptive Securities calculated by multiplying the Preemptive Securities by a fraction, the numerator of which is equal to the number of shares of Common Stock owned (or may be acquired upon the conversion of Equity Securities) by such Preemptive Right Holder and the denominator of which is equal to the total number of shares of Common Stock owned (or may be acquired upon the conversion of Equity Securities) by all Preemptive Right Holders (the "**Preemptive Percentage Allocation**"), and shall specify what amount it desires to purchase. Any Preemptive Right Holder that is a beneficial owner of Equity Security Equivalents and wishes to exercise the Preemptive Right to purchase Preemptive Securities, shall, to the extent allowed by the terms of such Equity Security Equivalents, convert, exercise or exchange that number of Equity Security Equivalents as it desires to be taken in account for purposes of calculating its Preemptive Percentage Allocation into or for shares of Common Stock within the Preemptive Notice Period and prior to delivery of its Preemptive Purchase Notice and only such shares of Common Stock held by such Preemptive Right Holder at the time of delivery of its Preemptive Purchase Notice shall be considered in calculating such Preemptive Right Holder's Preemptive Percentage Allocation; if the terms of such Equity Security Equivalents do not allow such conversion, exercise or exchange, such Preemptive Right Holder shall not be entitled to use such Equity Security Equivalents in calculating its Preemptive

Percentage Allocation, and if such Preemptive Right Holder holds only such Equity Security Equivalents, shall not be eligible to exercise the Preemptive Right.

(b) Each Preemptive Right Holder shall have the right to specify what additional amount, if any, of the Preemptive Securities it would agree to purchase (together with the Preemptive Securities that it may purchase pursuant to its Preemptive Percentage Allocation, the "**Preemptive Maximum**") in the event that any Preemptive Securities remain unpurchased by other Preemptive Right Holders (the "**Excess Preemptive Securities**"). If there are any Excess Preemptive Securities, then such Excess Preemptive Securities shall be allocated to each Preemptive Right Holder that elected to exercise its Preemptive Right for Preemptive Securities in excess of its Preemptive Percentage Allocation (each such Stockholder, an "**Excess Preemptive Stockholder**") based on the relative ownership of shares of Common Stock (or that may be acquired upon the conversion of Equity Securities) of such Excess Preemptive Stockholder to other Excess Preemptive Stockholders and subject to such Excess Preemptive Stockholder's Preemptive Maximum. Such calculations shall be performed sequentially until either (i) all Preemptive Securities shall have been allocated to one or more Preemptive Right Holders or (ii) a number of Preemptive Securities shall have been allocated to each Preemptive Right Holder sufficient to satisfy the Preemptive Maximum of each Stockholder who elected to exercise its Preemptive Right. For purposes of the foregoing, calculations of relative ownership shall be based upon the number of shares of Common Stock held by each Excess Preemptive Stockholder relative to all Excess Preemptive Stockholders, excluding any Excess Preemptive Stockholder that has already been allocated a number of Preemptive Securities sufficient to satisfy its Preemptive Maximum. For the avoidance of doubt, only those Stockholders granted the right to subscribe for Preemptive Securities in accordance with Section 4.4(a) above with respect to any Eligible Offering shall have the right to subscribe for Excess Preemptive Securities in such Eligible Offering.

(c) For purposes of this Agreement, the following term shall have the meaning set forth below:

"**Eligible Offering**" means an offer by the Company to issue any Preemptive Security, other than an offering by the Company:

(i) of Equity Securities in an IPO;

(ii) of securities of the Company issued upon the exercise of any security with respect to which the Company has previously complied with this Section 4.4 in all respects, which is convertible into or exchangeable for, or carries rights or options to purchase, securities of the Company;

(iii) of Equity Securities or options to purchase Equity Securities, in each case issued or granted in accordance with the terms of any employee or management equity option or equity purchase plan or agreement or other benefit or management incentive plans approved by the Board;

(iv) of Equity Securities issued on a *pro rata* basis pursuant to any stock split, stock dividend on Equity Securities or recapitalization approved by the Board;

(v) of Equity Securities issued, or issuable upon conversion of other securities of the Company issued pursuant to or in connection with any acquisitions, joint ventures or strategic marketing or supplier agreements approved by the Board, in each case as long as (A) such Equity Securities are issued to the counterparty of the underlying transaction and (B) such Equity Securities are not issued to any Stockholder or its Affiliates;

(vi) of Equity Securities issued, or issuable upon conversion of other securities of the Company issued, in each case, in customary amounts as an inducement in connection with any debt financing of the Company or its Subsidiaries; or

(vii) of Common Stock issued under the Plan.

(d) The Company shall, before any securities are issued pursuant to an Eligible Offering, give written notice (a "**Preemptive Notice**") thereof to each Preemptive Right Holder. Such Preemptive Notice shall specify the amount and type of securities proposed to be issued, the proposed date of issuance, the consideration that the Company intends to receive therefore and all other material terms and conditions of such proposed issuance. For a period of fifteen (15) days following the date of the Preemptive Notice (the "**Preemptive Notice Period**"), each Preemptive Right Holder shall be entitled, by written notice to the Company (a "**Preemptive Purchase Notice**"), to elect to purchase any or all of the securities being sold in the Eligible Offering, as provided in, and as subject to cutback as set forth in, Sections 4.4 (a)and (b). Failure by any Stockholder to provide a Preemptive Purchase Notice within the Preemptive Notice Period shall be deemed an election by such Stockholder not to purchase any of the Preemptive Securities. To the extent that there are Preemptive Securities that have not been elected to be purchased by Stockholders pursuant to this Section 4.4, then the Company may issue such Preemptive Securities to any Person, but only for consideration not less than, and otherwise on no less favorable terms, in the aggregate, to the Company than those set forth in the Preemptive Notice and only within one-hundred and twenty (120) days after the end of the Preemptive Notice Period. After the end of such period of time, the Company shall not effect any sale of any Preemptive Securities that are the subject of the Preemptive Notice without commencing *de novo* the procedures set forth in this Section 4.4(d).

(e) Subject to the closing of the applicable Eligible Offering, the Company shall issue to such Stockholder or Stockholders, and such Stockholder or Stockholders shall purchase from the Company for the consideration and on the terms set forth in the Preemptive Notice, the Preemptive Securities that such Stockholder or Stockholders shall have been allocated pursuant to this Section 4.4, within thirty (30) days of the end of the Preemptive Notice Period (subject to delay for an additional fifteen (15) Business Days for satisfaction of any required material third party or governmental approvals, compliance with applicable laws and the absence of any injunction or similar legal order preventing such transaction).

(f) The Company may comply with any applicable securities laws before issuing any Preemptive Securities pursuant to this Section 4.4 and shall not be in violation of the provisions hereof by reason of such compliance; *provided* that the Company is using commercially reasonable efforts to so comply.

(g) In the event that the Company proposes to enter into any debt financing not covered by Section 4.4(a) above (including a credit agreement but excluding any Intercompany Debt and excluding any Equipment Financing) (a "**Debt Financing**"), the Company shall provide written notice to each Preemptive Right Holder of the proposed Debt Financing and grant to each Preemptive Right Holder and/or, at such Preemptive Right Holder's election, one or more of its Affiliates, the right (the "**Debt Financing Right**") to participate in such Debt Financing upon the same terms and conditions as set forth in the notice of such Debt Financing on a *pro rata* basis based upon each such Preemptive Right Holder's outstanding shares of Common Stock (or that may be acquired upon the conversion of Equity Securities) when compared to the amount of outstanding shares of Common Stock held by the other participating Preemptive Right Holders. In the event that any Preemptive Right Holder elects to provide less than its *pro rata* share of the Debt Financing, the other Preemptive Right Holders shall have the right to exercise their right to provide such unexercised portion of the Debt Financing allocated among the interested Preemptive Right Holders *pro rata* according to the number of shares of Common Stock owned by each such Preemptive Right Holder in relation to the other interested Preemptive Right Holders. This procedure will be repeated until all of the *pro rata* portions of the Debt Financing have been exercised or the Preemptive Right Holders no longer desire to exercise their right to participate further in the Debt Financing. In the event that the Company proposes to issue Preemptive Securities as part of or pursuant to any Debt Financing, a Preemptive Right Holder must exercise both its Debt Financing Right and its Preemptive Right with respect to such Preemptive Securities in equal proportions or such Preemptive Right Holder shall not have the right to purchase such Preemptive Securities or participate in such Debt Financing.

(h) Except for equity securities of a Subsidiary to be owned by the Company or another Subsidiary or Intercompany Debt, the rights and obligations of the Company in this Section 4.4 shall apply to each Subsidiary of the Company to the same extent as if such Subsidiary were the Company for purposes of this Section 4.4.

(i) Any Preemptive Right Holder or its Affiliate(s) in exercising the Preemptive Right and/or Debt Financing Right pursuant to this Section 4.4 may designate a financial intermediary to acquire and hold the related Equity Securities and/or debt for which such Preemptive Right and/or Debt Financing Right has been exercised so long as such financial intermediary agrees unconditionally and irrevocably to Transfer such Equity Securities and/or debt to such Preemptive Right Holder or such Preemptive Right Holder's Affiliate(s) within thirty-five (35) days of receiving such Equity Securities and/or debt; *provided* that notwithstanding anything to the contrary in this Agreement, no Person acting as a financial intermediary as contemplated above shall be required to execute a Joinder Agreement in connection with acting in such capacity. Notwithstanding anything to the contrary contained herein no Stockholder may elect to assign its right to purchase Preemptive Securities to one or more of its Affiliates if: (i) upon consummation of the issuance of Preemptive Securities to such Affiliate(s), the Company would be required by the Securities Act or the Exchange Act,

including Section 12(g) of the Exchange Act, or any other foreign, federal, state or local securities laws to register any class of its Equity Securities with the SEC or other similar regulatory authority or to file periodic reports under Section 13 of the Exchange Act or other similar regulatory authority by virtue of such issuance or (ii) the Board in good faith determines such Affiliate is a Competitor.

Section 4.5 Information

(a) The Company shall deliver to each Stockholder, the following:

(i) as soon as available, but in any event within forty-five (45) days (except that, in the case of the first fiscal quarter in which the Effective Date occurs, sixty (60) days) of the end of each fiscal quarter for the first three quarters of a fiscal year, copies of the unaudited consolidated balance sheet, income statement, and statement of cash flows covering the Company's and its Subsidiaries operations during such period, prepared in accordance with United States generally accepted accounting principles ("**GAAP**") applicable to periodic financial statements generally, subject to changes resulting from year-end adjustments and the absence of footnotes, which shall also include presentation against prior year performance and budget for the Company and its Subsidiaries, consisting of a balance sheet, income statement, statement of cash flows, management's discussion and analysis and a reconciliation of the last twelve months adjusted earnings before interest, taxes, depreciation, and amortization;

(ii) as soon as available, but in any event within one hundred twenty (120) days of the end of each fiscal year of the Company, copies of financial statements of the Company and its Subsidiaries on a consolidated basis for each such fiscal year, including all notes thereto, audited by independent certified public accountants prepared in accordance with GAAP;

(iii) within ninety (90) days of the end of each fiscal year, an annual budget provided with management's discussion and analysis around assumptions on revenue, gross profit and selling, general and administrative expenses; and

(iv) such other information concerning the condition or operations, financial or otherwise, of the Company and its Subsidiaries as may, from time to time, be reasonably requested for a proper purpose.

(b) The Company may satisfy the delivery requirements of this Section 4.5 by providing Stockholders with password access to a virtual data room containing the information required to be provided by this Section 4.5. Access to such virtual data room may be made contingent upon a Stockholder certifying its right to receive such information pursuant to this Agreement and such virtual data room may be divided such that information is only available to those Stockholders entitled to receive such information pursuant to this Agreement.

Section 4.6 Supermajority Approval of Certain Transactions. Notwithstanding anything to the contrary contained in this Agreement, without the prior approval of the Stockholders of at least sixty-six and two-thirds percent (66 2/3%) of the outstanding shares of the Common Stock (a "**Supermajority**"), the Company shall not, and shall cause each of its Subsidiaries not to, take any of the following actions:

(a) any sale, lease or other disposition of, all or substantially all of the assets of the Company;

(b) purchase, lease, exchange or otherwise acquire securities or assets of any other person (other than the Company or any wholly owned subsidiary of the Company), involving aggregate consideration paid by the Company or its Subsidiaries (including by way of assumption of liabilities) in excess of $30,000,000;

(c) merge, consolidate with or into, engage in a share exchange with, or otherwise consummate any business combination transaction with, any other person, other than transactions (1) solely involving the merger or consolidation of a wholly owned subsidiary of the Company with or into, or a share exchange by a wholly owned subsidiary of the Company with, the Company or another wholly owned subsidiary of the Company, or (2) permitted by clause (b) above, if structured as a merger, consolidation, share exchange or other business combination transaction;

(d) amend, modify or repeal any provision of the Company's Certificate of Incorporation or By-Laws or the operating agreement for the Reorganized Borrower that is inconsistent with the Stockholders' Agreement;

(e) commence any proceeding or file any petition seeking relief under any insolvency law, consent to the institution of or fail to contest in a timely and appropriate manner any such proceeding or filing under any insolvency law, apply for or consent to the appointment of a receiver, trustee, custodian, sequestrator, conservator, or similar official for the Company or any of its Subsidiaries or assets; initiate or take any action for the liquidation, dissolution or winding up of the Company or any of its Subsidiaries; make a general assignment for the benefit of creditors; or take or authorize the taking of any action for the purpose of effectuating any of the foregoing; and

(f) increase the authorized number of directors of the Board (other than as provided below as to the expansion of the Board).

Section 4.7 Board of Directors

(a) **Number of Board Members.** Effective as of the date hereof, the Board shall consist of seven (7) members. The Company shall take all appropriate action to maintain the number of directors on the Board at seven (7), or such greater or lesser number, subject to Section 4.7(b), as is (i) required by the terms of Section 4.7(b), (ii) approved by a majority of the Board or by a vote of the majority of the Stockholders or (iii) required to comply with any listing, regulatory requirements and/or state laws applicable to the make-up of the Board from time to time; *provided* that such number shall not be decreased to a number that is less than the number of directors needed to satisfy the rights of the Stockholders to designate directors in

accordance with Section 4.7(b). Effective upon the consummation of the Transactions and the execution of this Agreement, the initial members of the Board shall be the individuals set forth on Exhibit B hereto.

(b) **Composition of the Board and Right to Designate Directors.** In connection with the initial constitution of the Board as set forth on Exhibit B hereto, and at each annual or special stockholders meeting called for the election of directors, and whenever the stockholders of the Company act by written consent with respect to the election of directors, each Stockholder agrees, for so long as this Agreement shall be in effect, to vote or otherwise give such Stockholder's consent in respect of all Voting Securities (whether now owned or hereafter acquired) owned by such Stockholder, and take all other appropriate action in order to cause, and the Company agrees to include in the slate of nominees such designees as Black Diamond and any Stockholders entitled to designate directors pursuant to Section 4.7(b)(i)(3) below shall request and agrees to take all necessary and desirable actions within its control (including nominating such designees to be elected as directors), in order to cause:

(i) the election to the Board of:

(1) four (4) designees of Black Diamond to the Board, *provided* that Black Diamond (A) shall lose the right to appoint one of its Board seats if it (together with its Affiliates) owns less than twenty-five percent (25%) of the outstanding shares of Common Stock and (B) shall lose the right to appoint any Board seat if it (together with its Affiliates) owns less than fifteen percent (15%) of the outstanding Common Stock;

(2) one (1) designee of the second largest Stockholder (calculated including holdings by the Stockholder and its Affiliates) of the outstanding shares of Common Stock on the Effective Date, so long as such Stockholder continues to own, together with its Affiliates, an aggregate of fifteen percent (15%) or more of the outstanding shares of Common Stock;

(3) one (1) designee to the Board selected by a majority vote of all of the Stockholders other than Black Diamond and its respective Affiliates and the second largest Stockholder (calculated including holdings by the Stockholder and its Affiliates) of the outstanding shares of Common Stock (the "**Minority Director**"), *provided* that this right shall be eliminated in the event that there are three (3) Stockholders (calculated including holdings by each such Stockholder and its Affiliates) that each hold more than thirty percent (30%) of the outstanding shares of Common Stock; and

(4) the CEO;

all of which persons shall hold office until their respective successors shall have been elected and shall have qualified, subject to their earlier removal in

accordance with Section 4.7(b)(ii) or (iii), as applicable, the By-Laws and applicable corporate law; *provided* that (i) in the event any Stockholder (other than Black Diamond (together with its Affiliates)) owns more than thirty percent (30%) of the outstanding shares of Common Stock, such Stockholder shall be entitled to designate a total of two (2) members of the Board, *provided* that such Stockholder (A) shall lose the right to appoint one of its Board seats if it (together with its Affiliates) owns less than twenty-five percent (25%) of the outstanding shares of Common Stock and (B) shall lose the right to appoint any Board seat if it (together with its Affiliates) owns less than fifteen percent (15%) of the outstanding Common Stock and (ii) in the event any Stockholder owns more than fifty percent (50%) of the outstanding shares of Common Stock (a "**Majority Stockholder**"), such Stockholder shall be entitled to designate a majority of the members of the Board and, if any other Stockholders retain the right to designate members of the Board pursuant to this Section 4.7, the size of the Board shall be increased as necessary to allow the Majority Stockholder to designate a sufficient number of Board members to constitute a majority of the Board. In the event that a Stockholder having the right to designate Board member(s) loses such right pursuant to this Section 4.7(b)(i), Stockholders holding a majority of the outstanding Voting Securities shall be entitled to designate a number of directors equal to (x) six (6) *minus* (y) the aggregate number of individuals with respect to which the applicable Stockholders have the right to designate to the Board pursuant to Section 4.7(b)(i)(1),(2) and (3). In addition, if any Stockholder becomes entitled to designate a member of the Board or an additional Board seat, as the case may be, and a Board seat is not otherwise available, the Board shall be expanded.

(ii) the removal from the Board, with or without cause, of any director elected in accordance with Section 4.7(b)(i)(1),(2) or (3) only upon the written request of the Stockholder or group of Stockholders that designated such director if such Stockholder or group of Stockholders, at the time of such written request, meets the Section 4.7(b)(i)(1),(2) or (3) criteria required to designate such director, or, if such Stockholder or group of Stockholders does not meet such criteria, the majority vote of all of the Voting Securities, in accordance with the Fundamental Documents; and

(iii) the removal from the Board, with or without cause, of any director elected in accordance with Section 4.7(b)(i)(4), immediately upon the resignation or removal of such director from the office of the CEO; *provided* that the vacancy created thereby shall remain unfilled until the successor to the office of the CEO is appointed whereupon such successor shall automatically be nominated to fill such vacancy.

The rights granted pursuant to this Section 4.7(b) shall be assignable, whether in whole or in part, in connection with the transfer of Common Stock. In the event that Black Diamond ceases to be able to designate any Board members pursuant to Section 4.7(b)(i)(1) and Section 4.7(b)(i)(2), then the reference to Black Diamond and its respective Affiliates, as applicable, shall be deemed to be deleted from Section 4.7(b)(i)(3).

(c) For purposes of this Section 4.7, any consent, approval, designation right or any other right to be exercised by any Stockholder and its Affiliates shall be approved by a majority of the voting power of all Voting Securities held by such Stockholder and its Affiliates collectively.

(d) **Affiliate Transactions.** Notwithstanding anything to the contrary contained in this Agreement, without the prior approval of a majority of the disinterested directors of the Board, the Company shall not, and shall cause each of its Subsidiaries not to, enter into any transaction or series of transactions with any Affiliate or Affiliates of the Company. Notwithstanding the foregoing, the parties hereto acknowledge and agree that the following shall not be subject to this Section 4.7(d): (i) the Effective Date transactions, (ii) issuance of Equity Securities or debt securities or a debt financing transaction pursuant to the preemptive rights granted under this Agreement, (iii) the issuance of Equity Securities or options to purchase Equity Securities, in each case issued or granted as awards in accordance with the terms of any employee or management equity option or equity purchase plan or agreement or other benefit or management incentive plans approved by the Board, (iv) the indemnification of, and advancement of expenses to, any officer, director or employee of the Company or its Subsidiaries pursuant to the By-Laws, the Charter, similar organizational documents or indemnification agreements, (v) intercompany transactions solely between or among the Company and/or its Subsidiaries, in each case, shall not be subject to the provisions of this Section 4.7(d) and (vi) registration rights in accordance with Section 5.5. In the event any Stockholder (together with its Affiliates) holds more than eighty percent (80%) of the outstanding shares of Voting Securities, the foregoing provisions of this Section 4.7(d) shall cease to apply.

(e) **D&O Insurance.** The Company agrees to obtain and maintain from and after the Effective Date directors' and officers' liability insurance of the type and amount customarily obtained by similarly situated companies.

ARTICLE V

ADDITIONAL COVENANTS

Section 5.1 Confidentiality

Subject to this Section 5.1, unless the disinterested members of the Board otherwise agree, each Stockholder shall hold in strict confidence any Proprietary Information (as hereinafter defined) it receives regarding the Company (or any predecessor thereto or any Subsidiary thereof), or any Proprietary Information regarding the business or affairs of any other Stockholder in respect of the Company, whether such information is received from the Company, another Stockholder or Affiliate of a Stockholder or another Person for the period commencing on the Effective Date and ending on the second anniversary of the date such Stockholder shall no longer be a Stockholder of the Company. "**Proprietary Information**" means any information about the Company, its Subsidiaries, any Stockholder and any Person with whom the Company or any Stockholder does business, including the information described in Section 4.5(a); *provided* that Proprietary Information shall not include (a) information that is or becomes available to the public generally without breach of this Section 5.1 and (b) information that becomes available to

the Stockholder on a non-confidential basis from a source other than the Company or its Subsidiaries or any other Stockholder or its Affiliates; *provided* that such source was not known by the Stockholder to be bound by a confidentiality obligation to the Company or its Subsidiaries. The provisions of this Section 5.1 shall survive and remain enforceable against each Stockholder for a period of two (2) years following the date such Stockholder ceases to be a Stockholder of the Company, whether through a Transfer of all of such Stockholder's Equity Securities or otherwise. Notwithstanding anything herein to the contrary, a Stockholder may disclose (a) Proprietary Information to a bona fide potential purchaser of Company securities held by such Stockholder and/or the broker in such transaction if such bona fide potential purchaser and/or broker executes a confidentiality agreement with such Stockholder in a form reasonably satisfactory to the Company (which, among other things, provides for third-party beneficiary rights in favor of the Company to enforce the terms thereof); (b) information required to be disclosed by applicable laws and regulations or stock exchange requirements or requirements of the Financial Industry Regulatory Authority, Inc., if applicable, including to regulatory bodies asserting jurisdiction over a Stockholder; (c) information required to be disclosed pursuant to an order, subpoena or legal process; (d) information disclosed to members, owners, partners, officers, fiduciaries, directors or Affiliates of such Stockholder (and the members, owners, managers, partners, officers, fiduciaries or directors of such Affiliates), and to auditors, counsel, and other professional advisors to such Persons or the Company; *provided* that such Persons have been informed of the confidential nature of the information and directed to keep such information confidential, and, in any event, the Stockholder disclosing such information shall be liable for any failure by such Persons to abide by the provisions of this Section 5.1; and (e) information disclosed in connection with any litigation or dispute among the Stockholder and the Company; *provided* that any disclosure pursuant to clause (b), (c) or (e) of this sentence shall be made only subject to such procedures the Stockholder making such disclosure determines in good faith are reasonable and appropriate in the circumstances, taking into account the need to maintain the confidentiality of such information and the availability, if any, of procedures under laws, regulations, subpoenas or other legal processes; *provided* further that nothing herein shall be construed to require any Stockholder to expend any amounts with respect to the procedures under laws, regulations, subpoenas or other legal process referenced in the immediately preceding proviso.

Section 5.2 Issuance of Additional Securities

Unless waived by the Board, the Company shall require any Person to whom it issues Equity Securities subsequent to the Effective Date, including upon exercise of any securities of the Company convertible into or exercisable or exchangeable for Equity Securities, to become a party to this Agreement and agree to be bound by all the provisions hereof by executing a Joinder Agreement. The parties hereto agree that any such additional purchaser shall become a party hereto without further consent of the parties by signing a Joinder Agreement and whether or not added to the list of Stockholders maintained by the Company.

Section 5.3 Competing Activities

Subject only to the terms of any written agreement to the contrary and irrespective of any rights to designate directors to the Board, the Stockholders and their officers, directors, shareholders, partners, members, managers, agents and employees, who are not employees of the Company or

its Subsidiaries ("**Non-Employee Holders**"), and each of their respective Affiliates, may engage or invest in, independently or with others, any business activity of any type or description, including those that might be the same as or similar to the Company's business and that might be in direct or indirect competition with the Company. Neither the Company, its Subsidiaries nor any Stockholder shall have any right in or to such other ventures or activities or to the income or proceeds derived therefrom. The Non-Employee Holders shall not be obligated to present to the Company any matter, transaction or interest that is presented to, or acquired, created, or developed by, or which otherwise comes into the possession of any such Non-Employee Holder, even if the matter, transaction or interest is of the character that, if presented to the Company, could be taken by the Company, other than if such matter, transaction or interest was presented to any Board designee of such Non-Employee Holder expressly and solely in such Person's capacity as a member of the Board specifically for the benefit of the Company. The Non-Employee Holders shall have the right to hold any matter, transaction or interest for their own account or to recommend such matter, transaction or interest to Persons other than the Company, other than if such opportunity was presented to any Board designee of such Non-Employee Holder expressly and solely in such Person's capacity as a member of the Board specifically for the benefit of the Company. Each Non-Employee Holder acknowledges that the other Non-Employee Holders and their officers, directors, shareholders, partners, members, managers, agents and employees and each of their respective Affiliates either now or in the future may directly or indirectly hold interest in and/or manage other businesses, including businesses that may compete with the Company and for the Non-Employee Holders' time. Each Stockholder hereby waives any and all rights and claims that they may otherwise have against the Non-Employee Holders and their officers, directors, shareholders, partners, members, managers, agents and employees, and each of their respective Affiliates, as a result of any of such activities.

Section 5.4 No Effect Upon Lending Relationship

Notwithstanding anything herein to the contrary, nothing contained in this Agreement shall affect, limit or impair the rights and remedies of any Stockholder or its Affiliates in its capacity as a lender to the Company or any of its subsidiaries pursuant to any agreement under which the Company or any of its Subsidiaries has borrowed money. Without limiting the generality of the foregoing, any such Person, in exercising its rights as a lender, including making its decision on whether to foreclose on any collateral security, will have no duty to consider (i) its status or the status of any of its Affiliates as a direct or indirect Stockholder of the Company, (ii) the interests of the Company or (iii) any duty it may have to any other direct or indirect Stockholder of the Company, except as may be required under the applicable loan documents or by commercial law applicable to creditors generally.

Section 5.5 Registration Rights.

(a) For purposes of this Section 5.5, (a) the terms "register", "registered" and "registration" refer to a registration effected by preparing and filing a registration statement on Form S-1, S-2 or S-3 in compliance with the Securities Act and the declaration or ordering of effectiveness of such registration statement and (b) the term "Holder" means any Stockholder. The provisions of this Section 5.5 shall apply to a Public Offering made in compliance with the laws of any jurisdiction outside of the United States, making appropriate adjustments to reflect the requirements thereunder.

(b) **Required Registration.**

(i) Subject to the conditions of this Section 5.5, at any date after an initial public offering of the Common Stock (the "**Demand Date**"), if the Company shall receive a written request from a Stockholder that beneficially owns, in the aggregate, fifteen percent (15%) or more of the outstanding shares of the Common Stock then outstanding (the "**Initiating Holder**") that the Company file a registration statement under the Securities Act (a "**Demand Registration**"), then the Company shall (x) within twenty (20) days of the receipt thereof, give written notice of such request to all Holders, and, (y) subject to the limitations of Section 5.5(b)(ii) and Section 5.5(b)(iii), use its reasonable best efforts to, as soon as practicable, effect the registration under the Securities Act of the Common Stock the Company has been so requested to register by the Initiating Holder, together with all or such portion of Common Stock of any Holder joining in such request as are specified in a written request received by the Company within fifteen (15) Business Days after the giving of the written notice from the Initiating Holder specified above. No more than three (3) underwritten Demand Registrations shall be required of the Company. The number of Demand Registrations in the form of a shelf registration shall be unlimited.

(ii) The Company shall not be obligated to use its reasonable best efforts to effect or take any action to cause to become effective any registration statement pursuant to Section 5.5(b) (i) during any period in which any other registration statement (other than on Forms S-4 or S-8 promulgated under the Securities Act or any successor forms thereto), pursuant to which Primary Shares are to be or were sold, has been filed and not withdrawn (provided that the Company is actively employing in good faith commercially reasonable efforts to cause such registration statement to become effective) or has been declared effective within the prior one hundred eighty (180) days or (ii) after the Company has effected a registration pursuant to Section 5.5(b) within the one hundred eighty (180) day period immediately preceding the date of a Demand Registration.

(iii) The Company may delay the filing or effectiveness of any registration statement as follows: (i) for a reasonable period not to exceed seventy-five (75) days after the date of a request for registration pursuant to this Section 5.5, if in the good faith judgment of the Board, such registration would be detrimental to the Company, and the Board concludes, as a result, that it is essential to defer the filing of such registration statement at such time; *provided*, *however*, that the Company shall not defer such obligations under this Section 5.5(b)(iii) more than twice in any twelve (12) month period.

(iv) With respect to any registration pursuant to Section 5.5, the Company may include in such registration any Primary Shares and/or other securities of

the Company; provided, however, that, if the managing underwriter advises the Company that the inclusion of all Common Stock and Primary Shares proposed to be included in such registration would interfere with the successful marketing (including pricing) of the Common Stock proposed to be included in such registration, then the number of Common Stock and Primary Shares proposed to be included in such registration shall be allocated, first, among the Holders of such Common Stock (or, if necessary, such Common Stock pro rata among the Holders of such Common Stock based upon the number of Common Stock requested to be included in such registration) or in such other proportions as shall mutually be agreed to by all such selling Holders, and, second, the Primary Shares and other securities of the Company proposed to be included in such registration; provided, however, that the number of Common Stock held by the Holders to be included in such underwriting shall not be reduced unless all other securities are first entirely excluded from the underwriting.

(v) The Initiating Holder shall have the right to designate the managing underwriters of an Initial Public Offering requested under this Section 5.5, subject to the reasonable consent of the Board.

(vi) At any time before the registration statement requested under this Section 5.5 covering Common Stock becomes effective, the Initiating Holder may request the Company to withdraw or not to file the registration statement.

(c) **Piggyback Registration.**

(i) If, at any time after an Initial Public Offering, the Company determines to register (including, for this purpose, a registration effected by the Company for holders of its equity securities other than the Holders) any of its securities under the Securities Act in connection with the public offering of such securities solely for cash, the Company shall, at each such time, promptly give each Holder written notice of such determination no later than thirty (30) days before its intended filing with the SEC. Upon the written request of any Holder received by the Company within fifteen (15) Business Days after the giving of any such notice by the Company, the Company shall use its reasonable best efforts to cause to be registered under the Securities Act all of the Common Stock of such Holder that such Holder has requested be registered for disposition in accordance with the intended method of disposition as stated in such notice and with the managing underwriter for such offering.

(ii) If the managing underwriter advises the Company that the inclusion of all securities, including Common Stock and Primary Shares and/or other securities of the Company proposed to be included in such registration would interfere with the successful marketing (including pricing) of the Common Stock proposed to be included in such registration, then the

number of Common Stock and Primary Shares proposed to be included in such registration shall be included in the following order:

(1) first, the Primary Shares; and

(2) second, the Common Stock requested to be included in such registration by the holders of such Common Stock (or, if necessary, such Common Stock pro rata among the Holders of such Common Stock based upon the number of Common Stock requested to be included in such registration).

Notwithstanding the foregoing, in no event shall the number of Common Stock included in the offering be reduced unless all other securities (other than Primary Shares) are first entirely excluded from the offering.

(iii) If any of the Holders determines not to agree to the terms of any such underwriting, it may elect to withdraw therefrom by written notice to the Company and the underwriter prior to the date of pricing such offer. Any Common Stock or other securities excluded or withdrawn from such underwriting shall be withdrawn from such registration.

(d) **Obligations of the Company**.

(i) Whenever required under Section 5.5(b) or Section 5.5(c) hereof to use its reasonable best efforts to effect the registration of any Public Offering of Common Stock, the Company shall (provided, that if such registration is being effected pursuant to Section 5.5(c), the Company may at any time delay or abandon the underlying registration without any liability to the Holders):

(1) prepare and file with the SEC a registration statement (or an amendment to a registration statement) with respect to such Common Stock and use its reasonable best efforts to cause such registration statement to become and remain effective, including, without limitation, filing of post-effective amendments and supplements to any registration statement or prospectus necessary to keep the registration statement current;

(2) as expeditiously as reasonably possible, prepare and file with the SEC such amendments and supplements to such registration statement and the prospectus used in connection with such registration statement as may be necessary to comply with the provisions of the Securities Act with respect to the disposition of all securities covered by such registration statement and to keep each registration and qualification under this Agreement effective (and in compliance with the Securities Act) by such actions as may be necessary or appropriate for a period of one hundred and twenty (120) days after the effective date of such registration statement

(unless all securities covered by such registration statement are sooner disposed of), all as requested by such Holder or Holders;

(3) as expeditiously as reasonably possible, furnish to the Holders such numbers of copies of a prospectus, including a preliminary prospectus, in conformity with the requirements of the Securities Act, and such other documents as they may reasonably request in order to facilitate the disposition of Common Stock owned by them in accordance with the plan of distribution provided for in such registration statement;

(4) as expeditiously as reasonably possible, use its reasonable best efforts to register and qualify the securities covered by such registration statement under such securities or "blue sky" laws of such jurisdictions as shall be reasonably appropriate for the distribution of the securities covered by the registration statement, provided, that the Company shall not be required in connection therewith or as a condition thereto to qualify to do business or to file a general consent to service of process in any such jurisdiction, and further provided, that (anything in this Agreement to the contrary notwithstanding with respect to the bearing of expenses) if any jurisdiction in which the securities shall be qualified shall require that expenses incurred in connection with the qualification of the securities in that jurisdiction be borne by selling stockholders, then such expenses shall be payable by selling Stockholders pro rata, to the extent required by such jurisdiction;

(5) notify each Holder of Common Stock covered by such registration statement, at any time when a prospectus relating thereto is required to be delivered under the Securities Act, upon discovery that, or upon the happening of any event as a result of which, the prospectus included in such registration statement, as then in effect, includes an untrue statement of a material fact or omits to state any material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made (provided, that upon such notification, each Holder agrees not to sell or otherwise Transfer or dispose of any Interests (or other securities) of the Company at the time held by such Holder or any interest or future interest therein until such statement or omission has been corrected, and there shall be added to the period during which the Company is obligated to keep such registration effective the number of days for which such sales or other transfers or dispositions were suspended), and at the request of any such Holder promptly prepare and furnish, without charge, to such Holder a reasonable number of copies of a supplement to such prospectus or an amendment of such registration statement as may

be necessary so that, as thereafter delivered to the purchasers of such securities, such prospectus shall not include an untrue statement of a material fact or omit to state a material fact required to be stated therein or necessary to make the statements therein not misleading in the light of the circumstances under which they were made;

(6) otherwise use its reasonable best efforts to comply with all applicable rules and regulations of the SEC, and make available to its security holders, as soon as reasonably practicable, an earnings statement covering the period of at least twelve (12) months but not more than eighteen (18) months, beginning with the first full calendar month after the effective date of such registration statement, which earnings statement shall satisfy the provisions of Section 11(a) of the Securities Act or Rule 158 thereunder; and

(7) use its reasonable best efforts to list all Common Stock covered by such registration statement on any securities exchange on which any class of similar securities is then listed.

(ii) If the Company at any time proposes to register any of its securities under the Securities Act subject to the registration rights of the Holders under Section 5.5(b) or Section 5.5(c), and such securities are to be distributed by or through one or more underwriters, then the Company will make reasonable efforts, if requested by any Holder of Common Stock who requests such registration, to arrange for such underwriters to include such Common Stock among the securities to be distributed by or through such underwriters.

(iii) In connection with the preparation and filing of each registration statement registering Common Stock under this Agreement, the Company will give the Holders of Common Stock on whose behalf such Common Stock are to be so registered and their underwriters, if any, and their respective counsel and accountants the opportunity to participate in the preparation of such registration statement, each prospectus included therein or filed with the SEC, and each amendment thereof or supplement thereto, and will give each of them such access to its books and records and such opportunities to discuss the business of the Company with its Officers, its counsel and the independent public accountants who have certified its financial statements, as shall be reasonably necessary, in the opinion of such Stockholders or such underwriters or their respective counsel, in order to conduct a reasonable and diligent investigation within the meaning of the Securities Act.

(e) **Furnish Information.** It shall be a condition precedent to the obligations of the Company to take any action pursuant to this Section 5.5 that each Holder shall furnish to the Company such information regarding such Holder, the Common Stock held by such Holder, and

the intended method of disposition of such securities as the Company shall reasonably request and as shall be required in connection with the action to be taken by the Company.

(f) **Expenses of Registration.** Registration, filing and qualification fees, printers' and accounting fees, fees and expenses of compliance with securities or blue sky laws, fees and expenses relating to filings with the Financial Industry Regulatory Authority, Inc. or any applicable securities exchange, fees of underwriters (excluding discounts, commissions or fees of underwriters, selling brokers, dealer managers or similar securities industry professionals attributable to the Common Stock being registered), and fees and disbursements of counsel for the Company and the reasonable fees and disbursements of one counsel for the selling Holders incurred in connection with a registration pursuant to Section 5.5(b) or Section 5.5(c) shall be borne by the Company; *provided*, *however*, that the Company shall not be required to pay for any expenses of any registration proceeding begun pursuant to Section 5.5(b) if the registration request is subsequently withdrawn by the Initiating Holder, unless the withdrawal of the registration request results from either (i) intentional actions by the Company outside the normal course of business, or (ii) the discovery of information about the Company, that is not known at the time of the Initiating Holder's request made pursuant to Section 5.5(b), that materially reduces the feasibility of the registration proceeding. Each Holder whose Common Stock are being sold will bear, pro rata, underwriters' discounts and brokerage and other commissions, fees and disbursements of its own counsel and all of its other expenses of such registration, offering and sale.

(g) **Underwriting Requirements.** In connection with any registration of Common Stock under this Agreement, the Holders whose Common Stock are included in the registration shall, if requested by the Company or the underwriters, enter into an underwriting agreement with such underwriters for such offering, such agreement to contain such terms and provisions as are customarily contained in underwriting agreements with respect to secondary distributions, including, without limitation, provisions relating to indemnification and contribution. The Holders on whose behalf Common Stock are to be distributed shall also complete and execute all questionnaires, powers of attorney and/or other documents required under the terms of such underwriting agreement.

(h) **Indemnification.** In the event any Common Stock are included in a registration statement pursuant to this Section 5.5:

(i) To the fullest extent permitted by law, the Company will indemnify and hold harmless each Holder joining in a registration and its directors and officers, any underwriter (as defined in the Securities Act) for it, and each Person, if any, who controls such Holder or such underwriter within the meaning of the Securities Act, from and against any losses, claims, damages, expenses (including reasonable attorneys' fees and expenses and reasonable costs of investigation) or liabilities, joint or several, to which they or any of them may become subject under the Securities Act or otherwise, insofar as such losses, claims, damages, expenses or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based on any untrue or alleged untrue statement of any material fact contained in such registration statement including any

preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, or arise out of or are based upon the omission or alleged omission to state therein a material fact required to be stated therein or necessary to make the statements made therein not misleading in light of the circumstances under which they were made, provided, that the indemnity agreement contained in this Section 5.5(h)(i) shall not apply to amounts paid in settlement of any such loss, claim, damage, liability or action if such settlement is effected without the consent of the Company (which consent shall not be unreasonably withheld), nor shall the Company be liable for any such loss, claim, damage, liability or action to the extent that it arises out of or is based upon (i) an untrue statement or omission made in connection with such registration statement, preliminary prospectus, final prospectus or amendments or supplements thereto in reliance upon and in conformity with written information furnished by such Holder, underwriter or control person to the Company specifically for inclusion in the Registration Statement in connection with such registration, or (ii) such Holder's failure to deliver a copy of the registration statement or prospectus or any amendments or supplements thereto after the Company has furnished such Holder with a sufficient number of copies of the same. Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of such Holder, underwriter or control person and shall survive the Transfer of such securities by such Holder.

(ii) To the fullest extent permitted by law, each Holder joining in a registration shall indemnify and hold harmless the Company, each of its Directors, each of its Officers who has signed the registration statement, each Person, if any, who controls the Company within the meaning of the Securities Act, and each agent and any underwriter for the Company and any Person who controls any such agent or underwriter and each other Holder and any Person who controls such Holder (within the meaning of the Securities Act) against any losses, claims, damages, expenses (including reasonable attorney's fees and expenses and reasonable costs of investigation) or liabilities to which the Company or any such Director, Officer, control person, agent, underwriter or other Holder may become subject, under the Securities Act or otherwise, insofar as such losses, claims, damages or liabilities (or actions or proceedings, whether commenced or threatened, in respect thereof) arise out of or are based upon an untrue statement of any material fact contained in such registration statement, including any preliminary prospectus or final prospectus contained therein or any amendments or supplements thereto, or arise out of or are based upon the omission to state therein a material fact required to be stated therein or necessary to make the statements therein not misleading, in each case to the extent that such untrue statement or omission was made in such registration statement, preliminary or final prospectus, or amendments or supplements thereto, in reliance upon and in conformity with written information furnished by

such Holder in connection with such registration, provided, that the indemnity agreement contained in this Section 5.5(h)(ii) shall not apply to amounts paid in settlements effected without the consent of such Holder (which consent shall not be unreasonably withheld). Such indemnity shall remain in full force and effect regardless of any investigation made by or on behalf of the Company or any such Director, Officer, Holder, underwriter or control person and shall survive the Transfer of such securities by such Holder.

(iii) Any Person seeking indemnification under this Section 5.5(h) will (i) give prompt written notice to the indemnifying party of any claim with respect to which it seeks indemnification, but the failure to give such notice will not affect the right to indemnification hereunder, except to the extent the indemnifying party is actually prejudiced by such failure and (ii) unless in such indemnified party's reasonable judgment a conflict of interest may exist between such indemnified and indemnifying parties with respect to such claim, permit such indemnifying party, and other indemnifying parties similarly situated, jointly to assume the defense of such claim with counsel reasonably satisfactory to the parties. In the event that the indemnifying parties cannot mutually agree as to the selection of counsel, each indemnifying party may retain separate counsel to act on its behalf and at its expense. The indemnified party shall in all events be entitled to participate in such defense at its expense through its own counsel. If such defense is not assumed by the indemnifying party, the indemnifying party will not be subject to any liability for any settlement made without its consent (but such consent will not be unreasonably withheld). No indemnifying party will consent to entry of any judgment or enter into any settlement which does not include as an unconditional term thereof the giving by the claimant or plaintiff to such indemnified party of a release from all liability in respect of such claim or litigation. An indemnifying party who is not entitled to, or elects not to, assume the defense of a claim will not be obligated to pay the fees and expenses of more than one counsel for all parties indemnified by such indemnifying party with respect to such claim.

(iv) If for any reason the foregoing indemnification is unavailable to any party or insufficient to hold it harmless as and to the extent contemplated by the preceding paragraphs of this Section 5.5(h), then each indemnifying party shall contribute to the amount paid or payable by the indemnified party as a result of such loss, claim, damage, expense or liability in such proportion as is appropriate to reflect the relative benefits received by the indemnifying party, on the one hand, and the applicable indemnified party, as the case may be, on the other hand, and also the relative fault of the indemnifying party and any applicable indemnified party, as the case may be, as well as any other relevant equitable considerations. No Person guilty of fraudulent misrepresentation (within the meaning of Section

11(f) of the Securities Act) shall be entitled to contribution from any Person or entity who was not guilty of such fraudulent misrepresentation.

(i) **Rule 144.** With a view to making available to the Holders and their transferees the benefits of Rule 144 and any other rule or regulation of the SEC that may at any time permit a Holder to sell securities of the Company to the public without registration, the Company agrees to use its reasonable best efforts to take all action that may be required as a condition to the availability of Rule 144 or such other rules or regulations, including without limitation to:

(i) make and keep public information available, as those terms are understood and defined in Rule 144, at all times subsequent to ninety (90) days after the effective date of the first registration statement covering an underwritten public offering of equity securities filed by the Company;

(ii) file with the SEC in a timely manner all reports and other documents required of the Company under the Securities Act and the Exchange Act (including, without limitation, under Section 12 or Section 14 of the Exchange Act); and

(iii) furnish to any Holder forthwith upon request a written statement by the Company that it has complied with the reporting requirements of Rule 144 (at any time ninety (90) days after the effective date of said first registration statement filed by the Company), and of the Securities Act and the Exchange Act (at any time after it has become subject to such reporting requirements), a copy of the most recent annual or quarterly report of the Company, and such other reports and documents so filed by the Company as may be reasonably requested in availing any Holder of any rule or regulation of the SEC permitting the selling of any such securities without registration.

(j) **Market Stand-Off Agreement.** If requested by the managing underwriter of the Initial Public Offering, or by the managing underwriter of a Public Offering for which Common Stock of any Holders have been registered, all Holders (in the case of such Initial Public Offering) or such participating Holders (in the case of such other Public Offering) shall not sell or otherwise Transfer or dispose of any Common Stock held by such Holders (other than those Common Stock included in the registration) during such period following the effective date of such registration as is usual and customary at such time in similar public offerings of similar securities (such period not to exceed one hundred eighty (180) days in the case of the Company's initial Public Offering). The foregoing shall not apply to the sale of any securities to an underwriter pursuant to an underwriting agreement, or the Transfer of any shares to any trust for the direct or indirect benefit of the Holder or the Family Member of the Holder, provided that the trustee of the trust agrees to be bound in writing by the restrictions set forth herein, and provided further that any such Transfer shall not involve a disposition for value. For the avoidance of doubt, this Section 5.5(j) shall apply to all Holders (in the case of an Initial Public Offering) or participating Holders (in the case of a Public Offering) whether or not such Holder has delivered a Joinder Agreement or agreed to be bound by this Agreement, pursuant to Section 18-101(7) of the Act.

(k) **Termination of Registration Rights.** The right of any Holder to request registration or inclusion in any registration with respect to Common Stock held by such Holder, pursuant to this Section 5.5, shall terminate on such date after the closing of the Initial Public Offering as all Common Stock held by such Holder may immediately be sold under Rule 144 during any ninety (90) day period.

ARTICLE VI

MISCELLANEOUS

Section 6.1 Entire Agreement; No Other Representations

This Agreement constitutes the entire agreement among the Stockholders, and supersedes all other prior agreements, understandings, representations and warranties both written and oral, among the parties hereto, with respect to the subject matter hereof, including the Plan Support Agreement.

Section 6.2 Modification or Amendment of Stockholders Agreement

Other than as a result of execution and delivery of a Joinder Agreement (including delivery of a Joinder Agreement by any employees, directors and/or officers of the Company and/or its Subsidiaries who receive Equity Securities or options to purchase Equity Securities issued in connection with awards, in each case issued or granted in accordance with the terms of any equity option or equity purchase plan or agreement or other benefit or management incentive plans approved by the Board), this Agreement may not be modified, altered, amended or supplemented except by an agreement in writing signed by the Stockholders holding at least sixty-six and two-thirds percent (66 2/3%) of the outstanding Voting Securities; *provided*, *however*, that any amendment, modification or waiver of the sections of this Agreement regarding Section 4.1, Section 4.2, Section 4.4, Section 4.5 and Section 5.5 shall require the approval of at least eighty-five percent (85%) of the outstanding Voting Securities. Any amendment, modification or waiver of any provision of this Agreement that treats a Stockholder or group of Stockholders in a disproportionate or adverse manner shall require the approval of such Stockholder; *provided*, *however*, that amendments that are applied consistently to an entire class shall not be deemed to be disproportionate and adverse.

Section 6.3 Waiver

No action taken pursuant to this Agreement, including any investigation by or on behalf of any party, shall be deemed to constitute a waiver by the party taking such action of compliance with any representations, warranties, covenants or agreements contained herein. The waiver by any party hereto of a breach of any provision of this Agreement shall not operate or be construed as a waiver of any preceding or succeeding breach and no failure by any party to exercise any right or privilege hereunder shall be deemed a waiver of such party's rights or privileges hereunder or shall be deemed a waiver of such party's rights to exercise the same at any subsequent time or times hereunder.

Section 6.4 Counterparts

This Agreement may be executed in several counterparts (including by facsimile, .pdf or other electronic transmission), each of which shall be deemed an original and all of which shall together constitute one and the same instrument.

Section 6.5 Governing Law and Venue; Waiver of Jury Trial

(a) THIS AGREEMENT AND ALL DISPUTES BETWEEN THE PARTIES UNDER OR RELATING TO THIS AGREEMENT OR THE FACTS AND CIRCUMSTANCES LEADING TO ITS EXECUTION AND DELIVERY, WHETHER IN CONTRACT, TORT OR OTHERWISE, WILL BE GOVERNED BY AND INTERPRETED AND CONSTRUED IN ACCORDANCE WITH THE LAWS OF THE STATE OF DELAWARE WITHOUT GIVING EFFECT TO CONFLICTS OF LAWS PRINCIPLES THAT WOULD RESULT IN THE APPLICATION OF THE LAW OF ANY OTHER STATE.

(b) Any action, suit or proceeding seeking to enforce any provision of, or based on any matter arising out of or in connection with, this Agreement or the transactions contemplated hereby shall only be brought in any federal court located in the State of Delaware or any Delaware state court, and each party consents to the exclusive jurisdiction and venue of such courts (and of the appropriate appellate courts therefrom) in any such action, suit or proceeding and irrevocably waives, to the fullest extent permitted by law, any objection that it may now or hereafter have to the laying of the venue of any such, action, suit or proceeding in any such court or that any such action, suit or proceeding brought in any such court has been brought in an inconvenient forum; *provided*, *however*, that any action, suit or proceeding, seeking to enforce a final judgment rendered in such court may be brought in any court of competent jurisdiction. Process in any such action, suit or proceeding may be served on any party anywhere in the world, whether within or without the jurisdiction of any such court. Without limiting the foregoing, service of process on such party as provided in Section 6.6 shall be deemed effective service of process on such party.

(c) EACH PARTY ACKNOWLEDGES AND AGREES THAT ANY CONTROVERSY THAT MAY ARISE OUT OF OR RELATING TO THIS AGREEMENT IS LIKELY TO INVOLVE COMPLICATED AND DIFFICULT ISSUES, AND THEREFORE EACH SUCH PARTY HEREBY EXPRESSLY, IRREVOCABLY AND UNCONDITIONALLY WAIVES ANY RIGHT SUCH PARTY MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION OR DISPUTE DIRECTLY OR INDIRECTLY BASED UPON OR ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER AGREEMENTS RELATING HERETO OR ANY DEALINGS AMONG THEM RELATING TO THE TRANSACTIONS CONTEMPLATED HEREBY. THE SCOPE OF THIS WAIVER IS INTENDED TO ENCOMPASS ANY AND ALL ACTIONS, SUITS AND PROCEEDINGS THAT RELATE TO THE SUBJECT MATTER OF THE TRANSACTIONS CONTEMPLATED HEREBY, INCLUDING CONTRACT CLAIMS, TORT CLAIMS, BREACH OF DUTY CLAIMS, AND ALL OTHER COMMON LAW AND STATUTORY CLAIMS. EACH PARTY REPRESENTS AND ACKNOWLEDGES THAT (i) NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD

NOT, IN THE EVENT OF ACTION, SUIT OR PROCEEDING, SEEK TO ENFORCE THE FOREGOING WAIVER, (ii) SUCH PARTY UNDERSTANDS AND WITH THE ADVICE OF COUNSEL HAS CONSIDERED THE IMPLICATIONS OF THIS WAIVER, (iii) SUCH PARTY MAKES THIS WAIVER VOLUNTARILY AND (iv) SUCH PARTY HAS BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND REPRESENTATIONS IN THIS SECTION 6.5(c). IN THE EVENT OF LITIGATION THIS AGREEMENT MAY BE FILED AS A WRITTEN CONSENT TO A TRIAL BY THE COURT.

Section 6.6 Notices and Waivers

(a) Any notice or other communication in connection with this Agreement (each, a "**Notice**") shall be delivered by hand, fax, overnight carrier, registered post or by courier using an internationally recognized courier company.

(b) Notices to the Company shall be sent to the following address, or such other person or address as the Company may notify to the Stockholders from time to time:

Boomerang Tube Holdings, Inc.
14567 North Outer Forty Drive, 5th Floor
Chesterfield, MO 63017
Fax: (636) 534-5657
Attention: General Counsel

with a copy to:

Black Diamond Capital Management, L.L.C.
One Conway Park
100 Field Drive, Suite 300
Lake Forest, IL 60045
Tel: (847) 615-9000
Fax: (847) 615-9064
Attention: Leslie A. Meier

and with a copy to:

Skadden, Arps, Slate, Meagher & Flom LLP
155 North Wacker Drive
Chicago, IL 60606
Tel: (312) 407-0700
Fax: (312) 407-8576
Attention: Kimberly A. deBeers

and with a copy to:

Babson Capital Management LLC
550 S. Tryon Street, Suite 3300
Charlotte, North Carolina 28202
Tel: [●]
Fax: [●]
Attention: [●]

(c) Notices to the Stockholders shall be sent to such Stockholders at the addresses set forth in the register of Stockholders maintained by the Company, or on any Joinder Agreement or such other address or facsimile number as such party or a Transferee of such party may hereafter specify in accordance with this Section 6.6 by notice to the party sending the communication. The Company will provide a Stockholder with the addresses for the other Stockholders upon a written request for such information for the purpose of sending out a Notice in accordance with this Agreement.

(d) A Notice shall be effective upon receipt and shall be deemed to have been received:

(i) at the time of delivery, if delivered by hand, overnight carrier, registered post or courier; and

(ii) at the expiration of two hours after completion of the transmission, if sent by facsimile,

provided that if a Notice would become effective under the above provisions after 5.30 p.m. on any Business Day, then it shall be deemed instead to become effective at 9.30 a.m. on the next Business Day. References in this Agreement to time are to local time at the location of the addressee as set out in the Notice.

(e) Subject to the foregoing provisions of this Section 6.6, in proving service of a Notice, it shall be sufficient to prove that the envelope containing such Notice was properly addressed and delivered by hand, overnight carrier, registered post or courier to the relevant address pursuant to the above provisions or that the facsimile transmission report (call back verification) states that the communication was properly sent.

Section 6.7 Certain Adjustments

The provisions of this Agreement shall apply to the full extent set forth herein with respect to any and all shares of Common Stock and other Equity Securities of the Company or any successor or assign of the Company (whether by merger, consolidation, sale of assets or otherwise) which may be issued in respect of, in exchange for, or in substitution for the shares of Common Stock or other Equity Securities, by combination, recapitalization, reclassification, merger, consolidation or otherwise and the terms "**Common Stock**," "**Equity Securities**," and "**Preemptive Securities**" shall include all such other securities. In the event of any change in the capitalization of the Company, as a result of any split, dividend or combination or otherwise,

in each case subject to the terms and conditions of this Agreement, the provisions of this Agreement shall be appropriately adjusted.

Section 6.8 Specific Performance

The parties hereto agree that irreparable damage would occur in the event that any of the provisions of this Agreement were not performed in accordance with their specific terms or were otherwise breached. It is accordingly agreed that the parties hereto shall be entitled to an injunction or injunctions to prevent breaches of the provisions of this Agreement and to enforce specifically the terms and provisions hereof in any state or federal court of Delaware (this being in addition to any other remedy to which they are entitled at law or in equity), and each party hereto agrees to waive in any action for such enforcement the defense that a remedy at law would be adequate.

Section 6.9 Severability

The provisions of this Agreement shall be deemed severable and the invalidity or unenforceability of any provision shall not affect the validity or enforceability or the other provisions hereof. If any provision of this Agreement, or the application thereof to any Person or any circumstance, is invalid or unenforceable, (a) a suitable and equitable provision shall be substituted therefor in order to carry out, so far as may be valid and enforceable, the intent and purpose of such invalid or unenforceable provision and (b) the remainder of this Agreement and the application of such provision to other Persons or circumstances shall not be affected by such invalidity or unenforceability, nor shall such invalidity or unenforceability affect the validity or enforceability of such provision, or the application thereof, in any other jurisdiction.

Section 6.10 Assignment

This Agreement shall be binding upon and inure to the benefit of the parties hereto, their respective heirs, successors and permitted assigns. Neither this Agreement nor any right, remedy, obligation or liability arising hereunder or by reason hereof shall be assignable by either the Company or any Stockholder except as otherwise expressly stated hereunder or with the prior written consent of each other party hereto. A Permitted Transferee who executes a Joinder Agreement in accordance with the provisions hereof may be assigned any rights available hereunder. All of the rights offered to a Stockholder under this Agreement are assignable to a Transferee who executes a Joinder Agreement.

Section 6.11 Termination

The provisions of this Agreement, other than Section 5.1 shall terminate upon the consent of Stockholders holding at least sixty-six and two-thirds percent (66 2/3%) of the outstanding Voting Securities or upon the earlier of (i) the closing of an IPO, in such case Section 5.5 shall survive, and (ii) the consummation of a Drag-Along Sale for all of the outstanding Equity Securities (other than any equity issued to management). The provisions of this Agreement set forth in Article IV and Sections 3.1 and 3.2 shall terminate immediately prior to the effectiveness of the registration statement for the IPO but such termination shall be expressly conditioned upon consummation of the IPO.

Section 6.12 Further Assurances

Each of the parties hereto covenants and agrees upon the request of any other to do, execute, acknowledge and deliver or cause to be done, executed, acknowledged and delivered all such further acts, deeds, documents, assignments, transfers, conveyances, powers of attorney and assurances as may be reasonably necessary or desirable to give full effect to the provisions of this Agreement and the transactions contemplated hereby.

Section 6.13 Fees and Expenses

The Company will pay its internal expenses (including all salaries and expenses of its officers and employees performing legal or accounting duties), the expenses of any annual audit or quarterly review, all tax preparation fees and expenses, and the expenses of any liability insurance, including directors' and officers' liability insurance.

Section 6.14 No Third-Party Beneficiaries

Nothing in this Agreement, express or implied, is intended or shall be construed to give any person other than the parties to this Agreement or their respective successors and assigns any legal or equitable right, remedy or claim under or in respect of any agreement or provision contained herein.

[Signature pages follow.]

IN WITNESS WHEREOF, the parties hereto have caused this Stockholders Agreement to be executed as of the Effective Date.

BOOMERANG TUBE HOLDINGS, INC.

By:_____
Name:
Title:

EXHIBIT A

JOINDER AGREEMENT

Whereas, the undersigned is acquiring simultaneously with the execution of this Agreement certain securities (the "**Equity Securities**") of Boomerang Tube Holdings, Inc. (the "**Company**"); and

Whereas, as a condition to the acquisition of the Equity Securities, the undersigned has agreed to join in a certain Stockholders Agreement (the "**Stockholders Agreement**") dated as of [●], 2015 among the Company and the Stockholders (as such term is defined in the Stockholders Agreement); and

Whereas, the undersigned understands that execution of this Agreement is a condition precedent to the acquisition of the Equity Securities;

Now, Therefore, as an inducement to both the [transferor/issuer] of the Equity Securities and the other Stockholders to [Transfer (as such term is defined in the Stockholders Agreement)/issue] and to allow the [Transfer/issuance] of the Equity Securities to the undersigned, the undersigned agrees as follows:

1. The undersigned hereby joins in the Stockholders Agreement as a "Stockholder" and agrees to be bound by the terms and provisions of, and shall be entitled to the benefits under, the Stockholders Agreement as provided by the Stockholders Agreement.

2. The undersigned hereby authorizes this signature page to be attached to a counterpart of such Agreement.

3. The undersigned hereby consents that the certificate or certificates if issue to the undersigned representing the Equity Securities shall be legended as follows:

> THE SECURITIES REPRESENTED BY THIS CERTIFICATE WERE ORIGINALLY ISSUED ON [●] PURSUANT TO THE AMENDED JOINT PREARRANGED CHAPTER 11 PLAN OF BOOMERANG TUBE, LLC AND CERTAIN OF ITS SUBSIDIARIES, DATED AS OF AUGUST 13, 2015 AND CONFIRMED BY THE BANKRUPTCY COURT FOR THE DISTRICT OF DELAWARE, ON [●], 2015. THESE SECURITIES WERE ISSUED PURSUANT TO AN EXEMPTION FROM THE REGISTRATION REQUIREMENT OF SECTION 5 OF THE SECURITIES ACT OF 1933, AS AMENDED, (THE "ACT") PROVIDED BY SECTION 1145 OF THE BANKRUPTCY CODE, 11 U.S.C. § 1145, AND HAVE NOT BEEN REGISTERED UNDER THE ACT OR ANY APPLICABLE STATE SECURITIES LAW, AND TO THE EXTENT THAT THE HOLDER OF THESE SECURITIES IS AN "UNDERWRITER" AS DEFINED IN SECTION 1145(B)(1) OF THE BANKRUPTCY CODE, THESE SECURITIES MAY NOT BE TRANSFERRED, OFFERED, ASSIGNED, SOLD, DONATED, PLEDGED, HYPOTHECATED, ENCUMBERED OR OTHERWISE DISPOSED OF

UNLESS (I) THERE IS AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR SUCH APPLICABLE STATE SECURITIES LAWS OR (II) REGISTRATION UNDER THE ACT OR SUCH APPLICABLE STATE SECURITIES LAWS IS NOT REQUIRED IN CONNECTION WITH SUCH TRANSFER. THE SECURITIES REPRESENTED BY THIS CERTIFICATE CANNOT BE TRANSFERRED IN A TRANSACTION WHICH WOULD CAUSE THE COMPANY TO BE SUBJECT TO THE REPORTING REQUIREMENTS OF THE EXCHANGE ACT.

THE SECURITIES REPRESENTED BY THIS CERTIFICATE ARE ALSO SUBJECT TO (I) SIGNIFICANT RESTRICTIONS ON THE TRANSFER PURSUANT TO THE COMPANY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION AND (II) THE TERMS AND CONDITIONS OF A STOCKHOLDERS AGREEMENT DATED AS OF [●], 2015. THE STOCKHOLDERS AGREEMENT CONTAINS, AMONG OTHER THINGS, SIGNIFICANT RESTRICTIONS ON TRANSFER OF THE SECURITIES OF THE COMPANY. COPIES OF THE COMPANY'S AMENDED AND RESTATED CERTIFICATE OF INCORPORATION AND THE STOCKHOLDERS AGREEMENT ARE ON FILE AT THE OFFICE OF THE COMPANY AND WILL BE FURNISHED WITHOUT CHARGE TO THE HOLDER OF SUCH SECURITY UPON WRITTEN REQUEST.

[Signature page follows.]

IN WITNESS WHEREOF, the undersigned has executed this Agreement this [●] day of [●], 20[●].

Name:
Title:
Address:

EXHIBIT B

BOARD OF DIRECTORS

[To come]

EXHIBIT 9

New Opco Certificate of Formation

CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF FORMATION
OF
BOOMERANG TUBE, LLC

1. The name of the limited liability company is Boomerang Tube, LLC (the "Company").

2. The Certificate of Formation of the Company is hereby amended to include Article Fourth, as follows:

> FOURTH, Pursuant to Section 1123(a)(6) of chapter 11 of title 11 of the Bankruptcy Code, the Company shall not issue any non-voting capital interest of any class, series or other designation; *provided*, *however*, that the provisions of this sentence shall (i) have no further force or effect beyond what is required by Section 1123(a)(6) of the Bankruptcy Code and (ii) only have such force and effect to the extent and for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applies to the Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this [•] day of [•], 2015.

BOOMERANG TUBE, LLC

By: _____
Name: [•]
Title: Authorized Person

EXHIBIT 10

New Opco LLC Agreement

FOURTH AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

BOOMERANG TUBE, LLC

THIS FOURTH AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (the "Agreement") of Boomerang Tube, LLC (formerly known as Oilfield Tubulars, LLC, the "Company") is entered into and effective as of the [•] day of [•], 2015, by Boomerang Tube Holdings, Inc., as the sole member of the Company (the "Member").

RECITAL

WHEREAS, the Company was formed as a limited liability company under the laws of the State of Delaware on May 9, 2007, and in accordance with the provisions of the Delaware Limited Liability Company Act and any successor statute, as amended from time to time (the "Act"), Gregg M. Eisenberg, as the sole member of the Company (the "Initial Member"), entered into a Limited Liability Company Agreement for Oilfield Tubulars, LLC, dated as of May 9, 2007 (the "Original LLC Agreement") to govern the affairs of the Company and the conduct of its business;

WHEREAS**,** the Initial Member entered into the First Amendment to the Limited Liability Company Agreement for Oilfield Tubulars, LLC dated as of January 24, 2008, which changed the name of the Company from Oilfield Tubulars, LLC to Boomerang Tube, LLC (the "Amendment to the Original LLC Agreement");

WHEREAS**,** the members entered into that certain Amended and Restated Limited Company Agreement for the Company dated as of May 23, 2008 (the "First Amended and Restated LLC Agreement"), which amended and restated and replaced in its entirety the Original LLC Agreement and the Amendment to the Original LLC Agreement;

WHEREAS**,** the members amended the First Amended and Restated LLC Agreement by Amendment No. 1 to Amended and Restated Limited Company Agreement for Boomerang Tube, LLC on February 12, 2009 and Amendment No. 2 to Amended and Restated Limited Company Agreement for Boomerang Tube, LLC on March 24, 2009;

WHEREAS, the members entered into that certain Second Amended and Restated Limited Liability Company Agreement for the Company dated as of January 25, 2010 (the "Second Amended and Restated LLC Agreement"), which amended and restated and replaced in its entirety the First Amended and Restated LLC Agreement and the amendments to the First Amended and Restated LLC Agreement;

WHEREAS, the members amended the Second Amended and Restated LLC Agreement by Amendment No. 1 to Second Amended and Restated Limited Company Agreement for Boomerang Tube, LLC on October 6, 2010;

WHEREAS, the members entered into that certain Third Amended and Restated Limited Liability Company Agreement for the Company dated as of October 11, 2012 (the "Third Amended and Restated LLC Agreement"), which amended and restated and replaced in its entirety the Second Amended and Restated LLC Agreement and the amendment to the Second Amended and Restated LLC Agreement; and

WHEREAS, the Member desires to continue the Company in accordance with the provisions of the Act and desires to further amend and restate the Third Amended and Restated LLC Agreement of the Company as set forth herein.

NOW THEREFORE, in consideration of the mutual representations, warranties, covenants and agreements contained herein, the parties hereto hereby agree as follows:

ARTICLE 1
The Limited Liability Company

1.1 Formation. The Member has previously formed the Company as a limited liability company pursuant to the provisions of the Act. A certificate of formation for the Company as described in Section 18-201 of the Act (the "Certificate of Formation") has been filed in the Office of the Secretary of State of the State of Delaware in conformity with the Act.

1.2 Name. The name of the Company shall be "Boomerang Tube, LLC" and its business shall be carried on in such name with such variations and changes as the Member shall determine or deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

1.3 Business Purpose; Powers. The Company is formed for the

purpose of engaging in any lawful business, purpose or activity for which limited liability companies may be formed under the Act. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

1.4 Excluded Opportunities. [The Company renounces any interest or expectancy of the Company in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of the Member, unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of the Member expressly and solely in such Member's capacity as a member of the Company.]

1.5 Registered Office and Agent. The location of the registered office of the Company shall be [•]. The Company's Registered Agent at such address shall be [•].

1.6 Term. Subject to the provisions of Article 6 below, the Company shall have perpetual existence.

ARTICLE 2
The Member

2.1 The Member. The name and address of the Member are as follows:

Name	Address
Boomerang Tube Holdings, Inc.	Boomerang Tube Holdings, Inc. 14567 North Outer Forty Drive, 5th Floor Chesterfield, MO 63017

2.2 Actions by the Member; Meetings. The Member may approve a matter or take any action at a meeting or without a meeting by the written consent of the Member. Meetings of the Member may be called at any time by the Member.

2.3 Liability of the Member. All debts, obligations and liabilities of

the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member.

2.4 Power to Bind the Company. The Member (acting in its capacity as such) shall have the authority to bind the Company to any third party with respect to any matter.

2.5 Admission of Members. Persons or entities may be admitted as members of the Company only upon the prior written approval of the Member.

ARTICLE 3
Management by the Member

3.1 Management of the Company. The management of the Company is fully reserved to the Member, and the Company shall not have "managers," as that term is used in the Act. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Member, who shall make all decisions and take all actions for the Company. In managing the business and affairs of the Company and exercising its powers, the Member shall act through resolutions adopted in written consents. Decisions or actions taken by the Member in accordance with this Agreement shall constitute decisions or action by the Company and shall be binding on the Company.

3.2 Officers and Related Persons. The Member shall have the authority to appoint and terminate officers of the Company and retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such officers, employees, agents and consultants as the Member deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties.

ARTICLE 4
Capital Structure and Contributions

4.1 Capital Structure. The capital structure of the Company shall consist of one class of common interests (the "Common Interests"). All Common Interests shall be identical with each other in every respect. The Member shall own all of the Common Interests issued and outstanding.

4.2 Capital Contributions. From time to time, the Member may determine that the Company requires capital and may make capital contribution(s) in an amount determined by the Member. A capital account shall be maintained for the Member, to which contributions and profits shall be credited and against which distributions and losses shall be charged.

ARTICLE 5
Profits, Losses and Distributions

5.1 Profits and Losses. For financial accounting and tax purposes, the Company's net profits or net losses shall be determined on an annual basis in accordance with the manner determined by the Member. In each year, profits and losses shall be allocated entirely to the Member.

5.2 Distributions. The Member shall determine profits available for distribution and the amount, if any, to be distributed to the Member, and shall authorize and distribute on the Common Interests, the determined amount when, as and if declared by the Member. The distributions of the Company shall be allocated entirely to the Member.

5.3 Tax Distributions. The Company may make tax distributions to the Member to permit the Member to pay federal and state income taxes then due and owing by the Member under applicable law on the taxable income of the Company.

ARTICLE 6
Events of Dissolution

The Company shall be dissolved and its affairs wound up upon the occurrence of any of the following events (each, an "Event of Dissolution"):

(a) The Member votes for dissolution; or

(b) A judicial dissolution of the Company under Section 18-802 of the Act.

No other event, including, without limitation, the death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member, shall cause the dissolution of the Company; *provided, however*, that in the event of any occurrence

resulting in the termination of the continued membership of the last remaining member of the Company, the Company shall be dissolved unless, within ninety (90) days following such event, the personal representative of the last remaining member agrees in writing to continue the Company and to the admission of such personal representative (or any other person or entity designated by such personal representative) as a member of the Company, effective upon the event resulting in the termination of the continued membership of the last remaining member of the Company.

ARTICLE 7
Transfer of Interests in the Company

The Member may sell, assign, transfer, convey, gift, exchange, pledge, hypothecate or otherwise dispose of ("Transfer") any or all of its Common Interests to any person or entity; *provided*, *however*, that such person or entity to whom such Common Interests are Transferred shall be an assignee and shall have no right to participate in the Company's business and affairs unless and until such person or entity shall be admitted as a member of the Company upon (i) the prior written approval by the Member pursuant to Section 2.5 of this Agreement and (ii) receipt by the Company of a written agreement executed by the person or entity to whom such Common Interests are Transferred agreeing to be bound by the terms of this Agreement.

ARTICLE 8
Exculpation and Indemnification

8.1 Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or any obligation or duty at law or in equity, none of the Member, nor any officers, directors, stockholders, partners, members, managers, employees, affiliates, representatives or agents of the Member, nor any officer, employee, representative or agent of the Company (individually, a "Covered Person" and, collectively, the "Covered Persons") shall be liable to the Company or any other person for any act or omission (in relation to the Company, its property or the conduct of its business or affairs, this Agreement, any related document or any transaction contemplated hereby or thereby) taken or omitted by a Covered Person, from and after the Effective Date, in good faith in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company and is within the scope of authority granted to such Covered Person by this Agreement, provided such act or omission does not constitute fraud, willful misconduct or gross negligence.

8.2 Indemnification. From and after the Effective Date, to the fullest

extent permitted by the Act, the Company shall indemnify and hold harmless each Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative ("Claims"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of the fact that he, she or it is a Covered Person or which relates to or arises out of the Company or its property, business or affairs, in each case with respect to the time period on and after the Effective Date. A Covered Person shall not be entitled to indemnification under this Section 8.2 with respect to (i) any Claim with respect to which such Covered Person has engaged in fraud, willful misconduct or gross negligence or (ii) any Claim initiated by such Covered Person unless such Claim (A) was brought to enforce such Covered Person's rights to indemnification hereunder or (B) was authorized or consented to by the Member. Expenses incurred in defending any Claim by (y) the Member or any officer, director, stockholder, partner, member, manager, or affiliate of the Member shall be paid by the Company and (z) any other Covered Person may be paid by the Company, but only upon the prior written approval of the Member in its sole and absolute discretion, upon such terms and conditions, if any, as the Member deems appropriate, in each case, in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company as authorized by this Section 8.2. "Effective Date" shall be as defined in the Plan on the date hereof. "Plan" shall mean the Debtors' Amended Joint Prearranged Chapter 11 Plan pursuant to Chapter 11 of the Bankruptcy Code, filed on September 4, 2015.

8.3 Amendments. Any repeal or modification of this Article 8 by the Member shall not adversely affect any rights of such Covered Person pursuant to this Article 8, including the right to indemnification and to the advancement of expenses of a Covered Person, existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

ARTICLE 9
Miscellaneous

9.1 Tax Treatment. Unless otherwise determined by the Member, the Company shall be a disregarded entity for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes), and the Member and the Company shall timely make any and all necessary elections and filings for the Company to be treated as a disregarded entity for U.S. federal income tax purposes (as well as for

any analogous state or local tax purposes).

9.2 Amendments. Amendments to this Agreement and to the Certificate of Formation shall be effective only if approved in writing by the Member. An amendment shall become effective as of the date specified in the approval of the Member or if none is specified as of the date of such approval.

9.3 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; *provided, however*, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the expectations of the Member regarding this Agreement. Otherwise, any invalid or unenforceable provision shall be replaced by the Member with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of laws thereof.

9.5 Limited Liability Company. The Member intends to form a limited liability company and does not intend to form a partnership under the laws of the State of Delaware or any other laws.

9.6 Indemnity. To the extent required by the Plan, the parties agree that solely with respect to any person who served as a director, officer or employee immediately prior to the Effective Date, and solely with respect to matters prior to the date hereof, indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses rights, if any, contained in the Third Amended and Restated LLC Agreement, shall continue in the same manner that they exist on the date hereof, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. "Cause of Action" and "Effective Date" shall be as defined in the Plan on the date hereof.

[*Signature page follows.*]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the day first above written.

BOOMERANG TUBE HOLDINGS, INC.

By: _____
Name: [●]
Title: [●]

EXHIBIT 11

Nonexclusive list of retained Causes of Actions

Retained Causes of Action

Notwithstanding, and without limiting the generality of, Section 4.16 of the Plan, the Debtors identify the following specific types of Causes of Action, to the extent not previously released, settled or compromised, or released or exculpated under Article VIII of the Plan, that are expressly preserved by the Debtors, the Reorganized Debtors, and the GUC Trustee, and over which it is anticipated that the Bankruptcy Court will exercise continuing subject-matter jurisdiction after the Effective Date:

- Avoidance Actions: Cause of Action to avoid preferential transfers as specified in section 547 of the Bankruptcy Code or transfers or obligations that were actually fraudulent or constructively fraudulent under section 548 of the Bankruptcy Code or to avoid any transfers or obligations avoidable under applicable non-bankruptcy law by virtue of section 544 of the Bankruptcy Code.

- SBI-Related Entities: Causes of Action related to (i) AG Strategy Investments LLC, YAS International LLC, SB Boomerang Tubular, LLC, Pinnacle Machine Holdings, LLC, Pinnacle Machine Land Holdings, LLC, Pinnacle Machine Processing, LLC, Pinnacle Machine Supply, LLC, Pinnacle Machine Works, LLC, CST Partners, LLC, SB American Tubulars, LLC, SBI Trading Company, SB International, Inc., SB Energy (HK) Limited, SB Precision Machinery Co., Ltd., SB Tension Steel Industries Co Ltd, American Tubular Products, LLC, Peak Pipe and Supply, LLC, Arrow Star Metals, Inc., Encore/SB Aviation, LLC, SB Navitas USA, LLC, SB Navitas Tubular Inc., SB Specialty Metals Holdings LLC, SB Specialty Metals LLC and Tiangong International Company Ltd.; (ii) any Affiliate of the entities listed in clause (i); and (iii) any direct or indirect equity holder, agent, employee or Insider of the entities identified in clauses (i) or (ii), including, without limitation, Arish Gupta, Satish Gupta, Yasmin Gupta, J.P. Wu, and any trust settled by the foregoing, which shall include, but not be limited to, Causes of Action related to the SBI Financing Agreement, that certain Purchase and Supply Agreement dated as of March 14, 2014 by and between Boomerang and Pinnacle Machine Works, LLC, and that certain Sales Agreement dated February 18, 2011 by and between Boomerang and SB Boomerang Tubular, LLC.

- Claims Related to Employment Agreements: Causes of Action against any employee for violating any non-compete provision, non-solicitation provision, or any similar restrictive covenant in an employment or severance agreement.

- Claims Related to Accounts Receivable, Loans and Accounts Payable: Causes of Action against or related to all Entities that owe or that may in the future owe money to the Debtors or Reorganized Debtors, including, without limitation, Appalachian Pipe Distributors, Gregg Eisenberg, Craig Matlock and Robert Heaster. Furthermore, the Debtors expressly reserve all Causes of Action against or related to all Entities who assert or may assert that the Debtors or Reorganized Debtors owe money to them.

- Claims Related to Insurance Policies: Causes of Action based in whole or in part upon any and all insurance contracts, insurance policies, occurrence policies, and occurrence contracts to which any Debtor or Reorganized Debtor is a party or pursuant to which any

Debtor or Reorganized Debtor has any rights whatsoever, including Causes of Action against insurance carriers, reinsurance carriers, insurance brokers, underwriters, occurrence carriers or surety bond issuers relating to coverage, indemnity, contribution, reimbursement or any other matters.

- Claims Related to Deposits, Adequate Assurance Postings, and Other Collateral Postings: Causes of Action based in whole or in part upon any and all postings of a security deposit, adequate assurance payment, or any other type of deposit or collateral.

- Claims, Defenses, Cross-Claims, and Counter-Claims Related to Litigation and Possible Litigation: all claims, defenses, cross claims, and counterclaims against or related to all Entities that are party to or that may in the future become party to litigation, arbitration, or any other type of adversarial proceeding or dispute resolution proceeding, whether formal or informal, judicial or non-judicial.

- Claims Related to Contracts and Leases: Causes of Action, based in whole or in part upon any and all contracts and leases to which any Debtor or Reorganized Debtor is a party or pursuant to which any Debtor or Reorganized Debtor has any rights whatsoever. The claims and Causes of Actions reserved include, without limitation, Causes of Action against vendors, suppliers of goods or services, or any other parties: (a) for overpayments, back charges, duplicate payments, improper holdbacks, deposits, warranties, guarantees, indemnities, recoupment, or setoff; (b) for wrongful or improper termination, suspension of services or supply of goods, or failure to meet other contractual or regulatory obligations; (c) for failure to fully perform or to condition performance on additional requirements under contracts with any one or more of the Debtors before the assumption or rejection, if applicable, of such contracts; (d) for payments, deposits, holdbacks, reserves, or other amounts owed by any creditor, utility, supplier, vendor, insurer, surety, factor, lender, bondholder, lessor, or other party; (e) for any liens, including mechanic's, artisan's, materialmen's, possessory, or statutory liens held by any one or more of the Debtors; (f) counter-claims and defenses related to any contractual obligations; (g) any turnover actions arising under section 542 or 543 of the Bankruptcy Code; (h) for unfair competition, interference with contract or potential business advantage, breach of contract, infringement of intellectual property, or any business tort claims; and (i) any accumulated service credits, both those that may apply to future vendor invoices and those from which the Debtors may be entitled to receive a refund.

- Claims Related to Customer Obligations: Causes of Action against or related to all customers that owe or may in the future owe money to the Debtors or the Reorganized Debtors, whether for unpaid invoices; unreturned, missing, or damaged inventory; or any other matter whatsoever.

EXHIBIT 12

SBI Secured Note

SECURED PROMISSORY NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION THEREFROM UNDER THE ACT, THE RULES AND REGULATIONS THEREUNDER AND APPLICABLE STATE LAWS.

BOOMERANG TUBE, LLC,

a Delaware Limited Liability Company

$[●]

Dated as of [●], 2015

FOR VALUE RECEIVED, BOOMERANG TUBE, LLC, a Delaware limited liability company ("Borrower"), pursuant to this secured note (the "Note"), hereby promises to pay to [●], ("Payee" or "Holder"), at such place as Payee may designate from time to time in writing, in lawful money of the United States of America, the principal amount of [●] Dollars ($[●]), or such lesser amount as may be outstanding from time to time on the Maturity Date (as defined below). This is the SBI Secured Note contemplated by the *Debtors' Amended Joint Prearranged Chapter 11 Plan* filed on September 4, 2015 [D.I. 470] (the "Plan") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in the chapter 11 proceedings captioned *In re Boomerang Tube, LLC*, Case No. 15-11247 (MFW). Capitalized terms not defined herein shall have the meaning set forth in the Bankruptcy Court's [●], 2015, order [D.I. [●]] confirming the Plan (the "Confirmation Order").

1. Payment. Payments of outstanding principal shall be due and payable in eighty-four (84) equal consecutive monthly installment each (the "Monthly Installment"), with the first Monthly Installment due and payable on [●], 2015, and subsequent Monthly Installments being due and payable on the last day of each calendar month thereafter through and including [●], 2022 (the "Maturity Date"), when a balloon payment of the outstanding principal indebtedness plus any accrued and unpaid interest thereon and other Note related charges shall be due and payable. Each Monthly Installment shall consist of principal and interest, such interest to be computed on the basis of an interest rate of four percent (4%) per annum (the

"Interest Rate"). Each Monthly Installment shall be [●] Dollars ($[●]). The Monthly Installment will be payable by Federal funds wire transfer to Payee as instructed by Payee.

2. Interest Rate. Notwithstanding anything herein to the contrary, the Interest Rate applied to this Note shall at no time exceed the maximum rate permitted by applicable law, whether now or hereafter in effect. In the event the Interest Rate or any other provisions hereof shall result in an effective rate of interest which, for any period of time, exceeds the limit of any usury or other law applicable to this Note, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied toward repayment of outstanding principal immediately upon receipt of such moneys by the Payee with the same force and effect as if Borrower had specifically designated such extra sums to be so applied to principal and the Payee had agreed to accept such extra payments in repayment of the principal balance hereof.

3. Prepayments. As set forth in the Plan, the Borrower may redeem the outstanding principal balance of the Note, in whole or in part, at any time, without penalty.

4. Security. To secure the payment of indebtedness of the Borrower to the Payee evidenced by this Note, the Borrower hereby grants to the Payee, subject to the terms of this Note, the Plan, and the Confirmation Order, a lien on and security interest in and to all of the Company's right, title and interest in and to the SBI Heat Treat Line Collateral (as such term is defined in the Plan) ("the Collateral"). Subject to the terms and conditions provided for herein, the Borrower authorizes Payee, in its discretion, to prepare and file all Uniform Commercial Code financing statements or other documents or certificates necessary to further perfect the Payee's security interest in the Collateral. The lien and security interest hereby granted to the Payee shall be (i) pari-passu with the lien and security interests in such Collateral heretofore or hereafter granted to any SBI Nonrecourse Notes or other SBI Secured Notes as defined in the Plan, but (ii) junior to any lien and security interest securing the Allowed SBI Lender Secured Claim.

5. Events of Default. An Event of Default shall exist if any of the following conditions or events shall occur or be continuing:

(a) The Borrower shall default in the payment of the outstanding principal amount of this Note, together with all interest accrued thereon, when the payment of this Note shall be demanded by the Payee, and such payment default has not been cured for five (5) days; or

(b) The Borrower (i) files, or consents by answer or otherwise to the filing against him of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, (iii) consents to the appoint of a custodian, receiver, trustee or other officer with

similar powers with respect to it or with respect to any substantial part of its property, (iv) is adjudicated as insolvent or to be liquidated, or (v) takes action for the purpose of any of the foregoing, or

(c) A court or governmental authority of competent jurisdiction enters an order appointing, without consent by either of the Borrower, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief of reorganization or any other petition in bankruptcy or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or any such petition shall be filed against the Borrower and such petition shall not be dismissed within sixty (60) days.

6. Payee's Rights and Remedies. Upon the occurrence of an Event of Default, Payee may exercise all rights and remedies as set forth in this Note, the Final Order, or as otherwise provided by law. No right or remedy conferred upon or reserved to Payee hereunder is intended to be exclusive of any other right or remedy, and each and every such right or remedy shall be cumulative and concurrent.

7. Costs and Expenses. Following the occurrence of any Event of Default, Borrower shall pay upon demand all costs and expenses (including reasonable attorneys' fees and expenses) incurred by Payee in the exercise of any of its rights, remedies or powers under this Note and any amount thereof not paid promptly following demand therefor shall be added to the principal sum hereunder.

8. Notices. All notices, requests, and demands to or upon the respective parties hereto to be effective shall be in writing (including telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or when received if mailed by certified or registered mail, or, in the case of telecopy notice, when sent, or, in the case of delivery by a nationally recognized overnight courier, when received, addressed as follows, or to such other address as may be hereafter notified by the respective parties hereto and any future Holder of this Note:

The Borrower	Boomerang Tube, LLC 14567 N. Outer Forty Road, 5th Floor Chesterfield, MO 63017 Attention: General Counsel or Chief Financial Officer Facsimile: (636) 534-5657 Telephone: (636) 534-5656 and (636) 812-0478 Electronic mail: mcullen@boomerangtube.com and jason.roberts@boomerangtube.com

With copies (which shall not constitute notice) to:	Debevoise & Plimpton LLP 919 Third Avenue New York, New York 10022 Attention: Paul D. Brusiloff, Esq. Facsimile: (212) 521-7015 Telephone: (212) 909-6000
Payee:	[●]
With copies (which shall not constitute notice) to:	[●]

9. Successors and Assigns. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part, by the Borrower without the prior written consent of the Payee. Subject to the foregoing, the rights and obligations of the Borrower and the Payee shall be binding upon and benefit the successors and assigns of the parties.

10. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of New York. Borrower agrees that any action or proceeding against it to enforce the Note may be commenced in state or federal court in New York County in the State of New York, and Borrower waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered or certified mail in accordance with the notice provisions set forth herein.

11. Entire Agreement; Amendments and Waivers.

(a) Entire Agreement. This Note constitutes and contains the entire agreement between Borrower and Payee with respect to the subject matter hereof and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, with respect to such subject matter. Borrower acknowledges that it is not relying on any representation or agreement made by Payee or any employee, attorney or agent thereof, other than the specific agreements set forth in this Note.

(b) Amendments and Waivers. Any and all amendments, modifications, discharges or waivers of, or consents to any departures from any provision of this Note or of any of the related loan documents shall not be effective without the written consent of Payee and Borrower. Any waiver or consent with respect to any provision of this Note shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, waiver or consent affected in accordance with this Section shall be binding upon Payee and on Borrower. Any

forbearance, failure or delay by Payee in the exercise of any right, power or remedy hereunder shall not be deemed to be a waiver of any such right, power or remedy and any single or partial exercise of any right, power or remedy, shall not preclude the further exercise thereof. Every right, power and remedy of Payee shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Payee.

12. WAIVER OF TRIAL BY JURY. AS A MATERIAL INDUCEMENT TO THE EXECUTION OF THIS NOTE, EACH OF THE PARTIES HERETO AGREES THAT IN THE EVENT ANY DISPUTE OR LITIGATION ARISING OUT OF THE TERMS AND PROVISIONS OF THIS NOTE, THE AGREEMENT OR OTHER TRANSACTION DOCUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES HERETO, THEN NO PARTY SHALL SEEK A JURY TRIAL IN SUCH PROCEEDING, IT BEING EXPRESSLY AGREED AND STIPULATED BY THE PARTIES HERETO THAT ANY DISPUTES ARE BETTER RESOLVED BY A JUDGE.

[Signature is on next page.]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

Boomerang Tube, LLC, a Delaware limited liability company

By:_____
Name:
Title:

PAYEE

By:_____
Name:
Title:

EXHIBIT 13

SBI Nonrecourse Note

SECURED PROMISSORY NOTE

THIS NOTE HAS NOT BEEN REGISTERED UNDER THE SECURITIES ACT OF 1933, AS AMENDED (THE "ACT"), OR THE SECURITIES LAWS OF ANY STATE AND MAY NOT BE SOLD, TRANSFERRED OR OTHERWISE DISPOSED OF IN THE ABSENCE OF AN EFFECTIVE REGISTRATION STATEMENT UNDER THE ACT OR AN EXEMPTION THEREFROM UNDER THE ACT, THE RULES AND REGULATIONS THEREUNDER AND APPLICABLE STATE LAWS.

BOOMERANG TUBE, LLC,

a Delaware Limited Liability Company

$[●]

Dated as of [●], 2015

FOR VALUE RECEIVED, BOOMERANG TUBE, LLC, a Delaware limited liability company ("Borrower"), pursuant to this secured note (the "Note"), hereby promises to pay to [●], ("Payee" or "Holder"), at such place as Payee may designate from time to time in writing, in lawful money of the United States of America, the principal amount of [●] Dollars ($[●]), or such lesser amount as may be outstanding from time to time on the Maturity Date (as defined below). This is the SBI Nonrecourse Note contemplated by the *Debtors' Amended Joint Prearranged Chapter 11 Plan* filed on September 4, 2015 [D.I. 470] (the "Plan") in the United States Bankruptcy Court for the District of Delaware (the "Bankruptcy Court") in the chapter 11 proceedings captioned *In re Boomerang Tube, LLC*, Case No. 15-11247 (MFW). Capitalized terms not defined herein shall have the meaning set forth in the Bankruptcy Court's [●], 2015, order [D.I. [●]] confirming the Plan (the "Confirmation Order").

1. Payment. Payment of the outstanding principal shall be made in full in a single balloon payment (the "Payment") on the Maturity Date, which date shall be the twelfth (12^{th}) anniversary of the date of this Note (the "Maturity Date"). Neither the Payment nor any principal thereon shall bear any interest.

2. Interest Rate. Notwithstanding that the Payment shall bear no interest, in the event any provisions hereof shall result in an effective rate of interest which, for any period of time, exceeds the limit of any usury or other law applicable to this Note, all sums in excess of those lawfully collectible as interest for the period in question shall, without further agreement or notice between or by any party hereto, be applied toward repayment of outstanding principal

immediately upon receipt of such moneys by the Payee with the same force and effect as if Borrower had specifically designated such extra sums to be so applied to principal and the Payee had agreed to accept such extra payments in repayment of the principal balance hereof.

3. Prepayments. As set forth in the Plan, the Borrower may redeem the outstanding principal balance of the Note, in whole or in part, at any time, without penalty.

4. Security. To secure the payment of indebtedness of the Borrower to the Payee evidenced by this Note, the Borrower hereby grants to the Payee, subject to the terms of this Note, the Plan, and the Confirmation Order, a lien on and security interest in and to all of the Company's right, title and interest in and to the SBI Heat Treat Line Collateral (as such term is defined in the Plan) ("the Collateral"). Subject to the terms and conditions provided for herein, the Borrower authorizes Payee, in its discretion, to prepare and file all Uniform Commercial Code financing statements or other documents or certificates necessary to further perfect the Payee's security interest in the Collateral. The lien and security interest hereby granted to the Payee shall be (i) pari-passu with the lien and security interests in such Collateral heretofore or hereafter granted to any SBI Nonrecourse Notes or other SBI Secured Notes as defined in the Plan, but (ii) junior to any lien and security interest securing the Allowed SBI Lender Secured Claim.

5. Events of Default. An Event of Default shall exist if any of the following conditions or events shall occur or be continuing:

(a) The Borrower shall default in the payment of the outstanding principal amount of this Note when the payment of this Note shall be demanded by the Payee, and such payment default has not been cured for five (5) days; or

(b) The Borrower (i) files, or consents by answer or otherwise to the filing against him of, a petition for relief or reorganization or arrangement or any other petition in bankruptcy, for liquidation or to take advantage of any bankruptcy, insolvency, reorganization, moratorium or other similar law of any jurisdiction, (ii) makes an assignment for the benefit of its creditors, (iii) consents to the appoint of a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, (iv) is adjudicated as insolvent or to be liquidated, or (v) takes action for the purpose of any of the foregoing, or

(c) A court or governmental authority of competent jurisdiction enters an order appointing, without consent by either of the Borrower, a custodian, receiver, trustee or other officer with similar powers with respect to it or with respect to any substantial part of its property, or constituting an order for relief or approving a petition for relief of reorganization or any other petition in bankruptcy or to take advantage of any bankruptcy or insolvency law of any jurisdiction, or any such petition shall be filed against the Borrower and such petition shall not be dismissed within sixty (60) days.

6. Payee's Rights and Remedies. Notwithstanding anything contained herein to the contrary, the sole recourse of the Payee against Borrower or any assets of Borrower for any amounts due hereunder upon an Event of Default shall be the Collateral, and Payee shall not commence any action seeking or be granted a judgment against Borrower or any property of Borrower other than the Collateral.

7. Costs and Expenses. Subject to the limitations of Section 6, following the occurrence of any Event of Default, Borrower shall pay upon demand all costs and expenses (including reasonable attorneys' fees and expenses) incurred by Payee in the exercise of any of its rights, remedies or powers under this Note, and any amount thereof not paid promptly following demand therefor shall be added to the principal sum hereunder.

8. Notices. All notices, requests, and demands to or upon the respective parties hereto to be effective shall be in writing (including telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or when received if mailed by certified or registered mail, or, in the case of telecopy notice, when sent, or, in the case of delivery by a nationally recognized overnight courier, when received, addressed as follows, or to such other address as may be hereafter notified by the respective parties hereto and any future Holder of this Note:

The Borrower	Boomerang Tube, LLC 14567 N. Outer Forty Road, 5th Floor Chesterfield, MO 63017 Attention: General Counsel or Chief Financial Officer Facsimile: (636) 534-5657 Telephone: (636) 534-5656 and (636) 812-0478 Electronic mail: mcullen@boomerangtube.com and jason.roberts@boomerangtube.com
With copies (which shall not constitute notice) to:	Debevoise & Plimpton LLP 919 Third Avenue New York, New York 10022 Attention: Paul D. Brusiloff, Esq. Facsimile: (212) 521-7015 Telephone: (212) 909-6000
Payee:	[●]
With copies (which shall not constitute notice) to:	[●]

9. Successors and Assigns. Neither this Note nor any of the rights, interests or obligations hereunder may be assigned, by operation of law or otherwise, in whole or in part,

by the Borrower without the prior written consent of the Payee. Subject to the foregoing, the rights and obligations of the Borrower and the Payee shall be binding upon and benefit the successors and assigns of the parties.

10. Governing Law. This Note shall be governed by and construed in accordance with the laws of the State of New York. Borrower agrees that any action or proceeding against it to enforce the Note may be commenced in state or federal court in New York County in the State of New York, and Borrower waives personal service of process and agrees that a summons and complaint commencing an action or proceeding in any such court shall be properly served and shall confer personal jurisdiction if served by registered or certified mail in accordance with the notice provisions set forth herein.

11. Entire Agreement; Amendments and Waivers.

(a) Entire Agreement. This Note constitutes and contains the entire agreement between Borrower and Payee with respect to the subject matter hereof and supersedes any and all prior agreements, negotiations, correspondence, understandings and communications between the parties, whether written or oral, with respect to such subject matter. Borrower acknowledges that it is not relying on any representation or agreement made by Payee or any employee, attorney or agent thereof, other than the specific agreements set forth in this Note.

(b) Amendments and Waivers. Any and all amendments, modifications, discharges or waivers of, or consents to any departures from any provision of this Note or of any of the related loan documents shall not be effective without the written consent of Payee and Borrower. Any waiver or consent with respect to any provision of this Note shall be effective only in the specific instance and for the specific purpose for which it was given. No notice to or demand on Borrower in any case shall entitle Borrower to any other or further notice or demand in similar or other circumstances. Any amendment, modification, waiver or consent affected in accordance with this Section shall be binding upon Payee and on Borrower. Any forbearance, failure or delay by Payee in the exercise of any right, power or remedy hereunder shall not be deemed to be a waiver of any such right, power or remedy and any single or partial exercise of any right, power or remedy, shall not preclude the further exercise thereof. Every right, power and remedy of Payee shall continue in full force and effect until such right, power or remedy is specifically waived by an instrument in writing executed by Payee.

12. WAIVER OF TRIAL BY JURY. AS A MATERIAL INDUCEMENT TO THE EXECUTION OF THIS NOTE, EACH OF THE PARTIES HERETO AGREES THAT IN THE EVENT ANY DISPUTE OR LITIGATION ARISING OUT OF THE TERMS AND PROVISIONS OF THIS NOTE, THE AGREEMENT OR OTHER TRANSACTION DOCUMENTS OR THE RELATIONSHIP BETWEEN THE PARTIES HERETO, THEN NO PARTY SHALL SEEK A JURY TRIAL IN SUCH PROCEEDING, IT BEING EXPRESSLY

AGREED AND STIPULATED BY THE PARTIES HERETO THAT ANY DISPUTES ARE BETTER RESOLVED BY A JUDGE.

[Signature is on next page.]

IN WITNESS WHEREOF, Borrower has duly executed this Note as of the day and year first above written.

Boomerang Tube, LLC, a Delaware limited liability company

By:_____
Name:
Title:

PAYEE

By:_____
Name:
Title:

EXHIBIT 14

Section 1129(a)(5) Disclosure of Directors and Officers

[TO COME]

EXHIBIT 15

Subordinated Notes Agreement

[INSERT LEGEND FORM SUBORDINATED NOTES INTERCREDITOR AGREEMENT]

$55,000,000

SUBORDINATED NOTES AGREEMENT

among

BOOMERANG TUBE, LLC
as Borrower,

THE LENDERS
FROM TIME TO TIME PARTIES HERETO

and

CORTLAND CAPITAL MARKET SERVICES LLC
as Administrative Agent and Collateral Agent,

dated as of [_____], 2015

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SUBORDINATED NOTES AGREEMENT, dated as of [_____], 2015, among BOOMERANG TUBE, LLC (the "Borrower"), a Delaware limited liability company, the several banks and other financial institutions from time to time party hereto (as further defined in Subsection 1.1, the "Lenders"), CORTLAND CAPITAL MARKET SERVICES LLC, as administrative agent (in such capacity and as further defined in Subsection 1.1, the "Administrative Agent") for the Lenders hereunder and as collateral agent (in such capacity and as further defined in Subsection 1.1, the "Collateral Agent") for the Secured Parties (as defined below).

The parties hereto hereby agree as follows:

W I T N E S S E T H :

WHEREAS, the Borrower has requested the Lenders to extend credit to the Borrower in form of Term Loans on the Closing Date, in an aggregate principal amount not in excess of $55,000,000, for the purposes set forth herein;

WHEREAS, the Lenders have agreed to make the requested Term Loans available on the terms and conditions set forth herein; and

WHEREAS, this Agreement is the "Subordinated Notes Agreement" referenced in that certain Debtors' Second Amended Joint Prearranged Chapter 11 Plan, dated September 4, 2015, of the Bankruptcy Code for Boomerang Tube, LLC, et al., filed in the bankruptcy case (the "Bankruptcy Case") of Boomerang Tube, LLC, et al., in the United States Bankruptcy Court for the District of Delaware (Case No. 15-11247 (MFW)) (the "Plan of Reorganization").

NOW, THEREFORE, in consideration of the premises and the mutual agreements contained herein, the parties hereto agree as follows:

SECTION 1

Definitions

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

"ABL Agent": Wells Fargo Capital Finance, LLC, in its capacity as agent for the lenders under the ABL Facility Documents, or any successor agent under the ABL Facility Documents.

"ABL Credit Agreement": the Credit Agreement, dated as of [_____], among the Borrower, the banks and other financial institutions party thereto from time to time as lenders and Wells Fargo Capital Finance, LLC, as agent thereunder, as such agreement may be amended, restated, supplemented, waived or otherwise modified from time to time or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time, in each case to the extent not prohibited by the terms of the Subordinated Notes Intercreditor Agreement (whether in whole or in part, whether with the original administrative agent and lenders or other

agents and lenders or otherwise, and whether provided under the original ABL Credit Agreement or one or more other credit agreements or otherwise, unless such agreement, instrument or other document expressly provides that it is not intended to be and is not an ABL Credit Agreement). Any reference to the ABL Credit Agreement hereunder shall be deemed a reference to each ABL Credit Agreement then in existence.

"ABL Facility": the collective reference to the ABL Credit Agreement, any ABL Facility Documents, any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original agents and lenders or other agents and lenders or otherwise, and whether provided under the original ABL Credit Agreement or one or more other credit agreements, indentures or financing agreements or otherwise, unless such agreement, instrument or document expressly provides that it is not intended to be and is not a ABL Facility), in each case to the extent not prohibited by the terms of the Subordinated Notes Intercreditor Agreement. Without limiting the generality of the foregoing, the term "ABL Facility" shall include any agreement (i) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (ii) adding Subsidiaries of the Borrower as additional borrowers or guarantors thereunder, (iii) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (iv) otherwise altering the terms and conditions thereof, in each case to the extent not prohibited by the terms of the Subordinated Notes Intercreditor Agreement.

"ABL Facility Documents": the "Loan Documents" as defined in the ABL Credit Agreement, as the same may be amended, restated, supplemented, waived, otherwise modified, extended, renewed, refinanced or replaced to the extent not prohibited by the terms of the Subordinated Notes Intercreditor Agreement.

"ABL Indebtedness": the Indebtedness under the ABL Facility.

"ABL Priority Collateral": the "Working Capital Priority Collateral" as defined in the Subordinated Notes Intercreditor Agreement.

"ABL/Term Loan Intercreditor Agreement": the Intercreditor Agreement, dated as of the date hereof, among the Senior Term Agent and the ABL Agent (in its capacity as agent under the ABL Facility Documents), and acknowledged by the Loan Parties, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time in accordance with the terms hereof and thereof.

"ABR": when used in reference to any Loan or Borrowing, is used when such Loan, or the Loans comprising such Borrowing, are bearing interest at a rate determined by reference to the Alternate Base Rate.

"ABR Loans": Loans to which the rate of interest applicable is based upon the Alternate Base Rate.

"Access Management Agreement": the Second Amended and Restated Management Consulting Agreement, dated as of June 8, 2015, by and between the Borrower and Access Tubulars, LLC.

"Acquired Indebtedness": Indebtedness of a Person (i) existing at the time such Person becomes a Subsidiary or (ii) assumed in connection with the acquisition of assets from such Person, in each case other than Indebtedness Incurred in connection with, or in contemplation of, such Person becoming a Subsidiary or such acquisition. Acquired Indebtedness shall be deemed to be Incurred on the date of the related acquisition of assets from any Person or the date the acquired Person becomes a Subsidiary.

"Acquisition Indebtedness": Indebtedness of (A) the Borrower or any Restricted Subsidiary Incurred to finance or refinance, or otherwise Incurred in connection with, any acquisition of any assets (including Capital Stock), business or Person, or any merger or consolidation of any Person with or into the Borrower or any Restricted Subsidiary, or (B) any Person that is acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary Incurred in connection with any such acquisition, merger or consolidation.

"Additional Assets": (i) any property or assets that replace the property or assets that are the subject of an Asset Disposition; (ii) any property or assets (other than Indebtedness and Capital Stock) used or to be used by the Borrower or a Restricted Subsidiary or otherwise useful in a Related Business, and any capital expenditures in respect of any property or assets already so used; (iii) the Capital Stock of a Person that is engaged in a Related Business and becomes a Restricted Subsidiary as a result of the acquisition of such Capital Stock by the Borrower or another Restricted Subsidiary; or (iv) Capital Stock of any Person that at such time is a Restricted Subsidiary acquired from a third party.

"Additional Indebtedness": any Indebtedness that is (a) incurred by the Borrower in compliance with Subsection 8.1 hereof and the relevant covenant restricting indebtedness in the ABL Credit Agreement and the Senior Term Debt Credit Agreement and (b) secured by a Lien in compliance with Subsection 8.6 hereof and the relevant negative covenant restricting liens in the ABL Credit Agreement and the Senior Term Debt Credit Agreement, which Indebtedness shall be designated by the Borrower under the Subordinated Notes Intercreditor Agreement.

"Additional Obligations": senior or subordinated Indebtedness (which Indebtedness may be (x) secured by a Lien ranking pari passu to the Lien securing the Third Lien Obligations, (y) secured by a Lien ranking junior to the Lien securing the Third Lien Obligations or (z) unsecured), including customary bridge financings, in each case issued or incurred by the Borrower or a Guarantor, the terms of which Indebtedness (i) do not provide for a maturity date or weighted average life to maturity earlier than the Maturity Date of the Term Loans or shorter than the weighted average life to maturity of the Term Loans, as the case may be (other than an earlier maturity date and/or shorter weighted average life to maturity for customary bridge financings, which, subject to customary conditions, would either be automatically converted into

or required to be exchanged for permanent financing which does not provide for an earlier maturity date or a shorter weighted average life to maturity than the Maturity Date of the Term Loans or the weighted average life to maturity of the Term Loans, as applicable), (ii) to the extent such Indebtedness is subordinated, provide for customary payment subordination to the Term Loan Facility Obligations under the Loan Documents as reasonably determined by the Borrower in good faith and (iii) do not provide for any mandatory repayment or redemption from asset sales, casualty or condemnation events on more than a ratable basis with the Term Loans (after giving effect to any amendment in accordance with Subsection 11.1(d)(v)); provided that (a) such Indebtedness shall not be secured by any Lien on any asset of any Loan Party that does not also secure the Term Loan Facility Obligations, or be guaranteed by any Person other than the Guarantors, and (b) if secured by Collateral, such Indebtedness (and all related Obligations) shall be subject to the terms of the Subordinated Notes Intercreditor Agreement (if such Indebtedness and related Obligations constitute Term Loan Facility Obligations), any Junior Lien Intercreditor Agreement (if such Indebtedness and related Obligations are to be secured by a lien junior to the Term Loan Facility Obligations) or an Other Intercreditor Agreement (if otherwise agreed by the Administrative Agent and the Borrower).

"Additional Obligations Documents": any document or instrument (including any guarantee, security agreement or mortgage and which may include any or all of the Loan Documents) issued or executed and delivered with respect to any Additional Obligations by any Loan Party.

"Adjusted LIBOR Rate": with respect to any Borrowing of Eurodollar Loans for any Interest Period, an interest rate per annum determined by the Administrative Agent to be equal to (a) the LIBOR Rate for such Borrowing of Eurodollar Loans in effect for such Interest Period divided by (b) 1 minus the Eurodollar Reserve Percentage; provided that the Adjusted LIBOR Rate shall not be less than 0%.

"Administrative Agency Fee Letter": the letter agreement dated as of the date hereof between the Borrower and the Administrative Agent.

"Administrative Agent": as defined in the Preamble hereto and shall include any successor to the Administrative Agent appointed pursuant to Subsection 10.6.

"Administrative Agent's Office": the Administrative Agent's address and, as appropriate, account as set forth in Subsection 11.2, or such other address or account as the Administrative Agent may from time to time notify the Borrower and the Lenders.

"Affected Loans": as defined in Subsection 4.9.

"Affiliate": as applied to any Person, any other Person who Controls, is Controlled by, or is under common Control with, such Person; provided, however, that, for purposes of Subsection 8.5 of the Agreement: (a) any Person which owns directly or indirectly 10% or more of the Capital Stock having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, (b) each director (or comparable manager) of a Person shall be

deemed to be an Affiliate of such Person, and (c) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.

"Affiliate Transaction": as defined in Subsection 8.5(a).

"Agent Parties": as defined in Subsection 11.2(e).

"Agents": the collective reference to the Administrative Agent and the Collateral Agent and "Agent" shall mean any of them.

"Agreement": this Senior Notes Agreement, as amended, restated, supplemented, waived or otherwise modified, from time to time.

"Alternate Base Rate": for any day, a rate per annum equal to the highest of (i) the Base Rate for such day, (ii) the sum of 0.50% plus the Federal Funds Effective Rate for such day and (iii) the LIBOR Rate (determined by reference to clause (ii) of the definition thereof) plus 1.00%; provided that the Alternate Base Rate shall not be less than 0%.

"Amendment": as defined in Subsection 8.3(c).

"Applicable Margin": 17.50% per annum.

"Approved Fund": as defined in Subsection 11.6(b).

"Asset Disposition": any sale, lease, transfer or other disposition of shares of Capital Stock of a Restricted Subsidiary (other than directors' qualifying shares, or (in the case of a Foreign Subsidiary) to the extent required by applicable law), property or other assets (each referred to for the purposes of this definition as a "disposition") by the Borrower or any of its Restricted Subsidiaries (including any disposition by means of a merger, consolidation or similar transaction) other than (i) a disposition to the Borrower or a Restricted Subsidiary, (ii) a disposition in the ordinary course of business, (iii) a disposition of Cash Equivalents, Investment Grade Securities or Temporary Cash Investments, (iv) the sale or discount (with or without recourse, and on customary or commercially reasonable terms) of accounts receivable or notes receivable arising in the ordinary course of business, or the conversion or exchange of accounts receivable for notes receivable, but only in connection with the compromise or collection thereof, (v) any Restricted Payment Transaction, (vi) [reserved], (vii) [reserved], (viii) any "fee in lieu" or other disposition of assets to any Governmental Authority that continue in use by the Borrower or any Restricted Subsidiary, so long as the Borrower or any Restricted Subsidiary may obtain title to such assets upon reasonable notice by paying a nominal fee, (ix) any exchange of property pursuant to or intended to qualify under Section 1031 (or any successor section) of the Code, or any exchange of equipment to be leased, rented or otherwise used in a Related Business, (x) [reserved], (xi) any disposition arising from foreclosure, condemnation or similar action with respect to any property or other assets, or exercise of termination rights under any lease, license, concession or other agreement, or necessary or advisable (as determined by the Borrower in good faith) in order to consummate any acquisition of any Person, business or assets, or pursuant to buy/sell arrangements under any joint venture or similar agreement or arrangement, (xii) any disposition of Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary, (xiii) a disposition of Capital Stock of a Restricted Subsidiary pursuant

to an agreement or other obligation with or to a Person (other than the Borrower or a Restricted Subsidiary) from whom such Restricted Subsidiary was acquired, or from whom such Restricted Subsidiary acquired its business and assets (having been newly formed in connection with such acquisition), entered into in connection with such acquisition, (xiv) any disposition or series of related dispositions for aggregate consideration not to exceed $550,000 per year, (xv) the abandonment or other disposition of patents, trademarks or other intellectual property that are, in the reasonable judgment of the Borrower, no longer economically practicable to maintain or useful in the conduct of the business of the Borrower and its Subsidiaries taken as a whole and so long as such abandonment or other disposition is not, in the good faith determination of the Borrower, materially adverse to the interests of the Lenders, or (xvi) any non-exclusive license, sublicense or other grant of right-to-use of any trademark, copyright, patent or other intellectual property.

"Assignee": as defined in Subsection 11.6(b)(i).

"Assignment and Acceptance": an Assignment and Acceptance, substantially in the form of Exhibit E hereto.

"Bank Products Agreement": (1) any agreement pursuant to which a bank or other financial institution agrees to provide (a) treasury services, (b) credit card, merchant card, purchasing card or stored value card services (including, without limitation, the processing of payments and other administrative services with respect thereto), (c) cash management services (including, without limitation, controlled disbursements, automated clearinghouse transactions, return items, netting, overdrafts, depository, lockbox, stop payment, electronic funds transfer, information reporting, wire transfer and interstate depository network services) and (d) other banking products or services as may be requested by any Restricted Subsidiary (other than letters of credit and other than loans and advances except indebtedness arising from services described in clauses (a) through (c) of this definition) and (2) any "Bank Products Agreement" as defined in the Subordinated Notes Intercreditor Agreement.

"Bank Products Bank": any Person that, at the time it enters into a Bank Products Agreement, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Bank Products Agreement.

"Bank Products Obligations": of any Person means the obligations of such Person pursuant to any Bank Products Agreement.

"Bankruptcy Case": as defined in the recitals to this Agreement.

"Base Rate": for any day, the rate of interest per annum quoted in *The Wall Street Journal*, Money Rates Section as the "prime rate" in effect from time to time (or if such rate is at any time not available, the prime rate so quoted by any banking institution selected by the Administrative Agent), which rate is not intended to be the lowest rate charged by any such banking institution to its borrowers.

"Board": the Board of Governors of the Federal Reserve System.

"Board of Directors": for any Person, the board of directors or other governing body of such Person or, if such Person does not have such a board of directors or other governing body and is owned or managed by a single entity, the Board of Directors of such entity, or, in either case, any committee thereof duly authorized to act on behalf of such Board of Directors. Unless otherwise provided, "Board of Directors" means the Board of Directors of the Borrower.

"Borrower": as defined in the Preamble hereto.

"Borrower Materials": as defined in Subsection 7.2.

"Borrowing": the borrowing of one Type of Loans of a given Tranche from all the Lenders having Initial Term Loan Commitments or other commitments under such Tranche, as the case may be, on a given date (or resulting from a conversion or conversions on such date) having, in the case of Eurodollar Loans, the same Interest Period.

"Borrowing Base": the sum of (1) 70.0% of the book value of Inventory of the Borrower and its Restricted Subsidiaries and (2) 85.0% of the book value of Receivables of the Borrower and its Restricted Subsidiaries (in each case, determined as of the end of the most recently ended fiscal month or quarter of the Borrower for which financial statements have been (or are required to have been) delivered under Subsection 7.1(a) or 7.1(b), and, in the case of any determination relating to any Incurrence of Indebtedness, on a pro forma basis including (x) any property or assets of a type described above acquired since the end of such fiscal month or quarter and (y) any property or assets of a type described above being acquired in connection therewith.

"Business Day": any day other than a Saturday, Sunday or other day on which commercial banks are authorized to close under the laws of, or are in fact closed in, the state where the Administrative Agent's Office is located, except that, if such day relates to any Eurodollar Loan, such day shall also be a London Banking Day.

"Capital Expenditures": for any period, the aggregate of all expenditures (whether paid in cash or accrued as liabilities and including in all events all amounts expended or capitalized under leases evidencing Capitalized Lease Obligations) by the Borrower and the Restricted Subsidiaries during such period that, in conformity with GAAP, are or are required to be included as capital expenditures on a consolidated statement of cash flows of the Borrower and its Restricted Subsidiaries.

"Capital Stock": with respect to any Person, any and all of the shares of capital stock of (or other ownership or profit interests in) such Person, any and all of the warrants, options or other rights for the purchase or acquisition from such Person of shares of capital stock of (or other ownership or profit interests in) such Person, any and all of the securities convertible into or exchangeable for shares of capital stock of (or other ownership or profit interests in) such Person or warrants, rights or options for the purchase or acquisition from such Person of such shares (or such other interests), and any and all of the other ownership or profit interests in such Person (including partnership, member or trust interests therein and including Preferred Stock), whether voting or nonvoting, and whether or not such shares, warrants, options, rights or other interests are outstanding on any date of determination.

"Capitalized Lease Obligation": an obligation that is required to be classified and accounted for as a capitalized lease for financial reporting purposes in accordance with GAAP. The Stated Maturity of any Capitalized Lease Obligation shall be the date of the last payment of rent or any other amount due under the related lease.

"Captive Insurance Subsidiary": any Subsidiary of the Borrower that is subject to regulation as an insurance company (or any Subsidiary thereof).

"Cash Equivalents": any of the following: (a) money, (b) securities issued or fully guaranteed or insured by the United States of America or a member state of the European Union or any agency or instrumentality of any thereof, (c) time deposits, certificates of deposit or bankers' acceptances of (i) any bank or other institutional lender under this Agreement or the ABL Facility or any affiliate thereof or (ii) any commercial bank having capital and surplus in excess of $500,000,000 (or the foreign currency equivalent thereof as of the date of such investment) and the commercial paper of the holding company of which is rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's (or if at such time neither is issuing ratings, then a comparable rating of another nationally recognized rating agency), (d) repurchase obligations with a term of not more than seven days for underlying securities of the types described in clauses (b) and (c) above entered into with any financial institution meeting the qualifications specified in clause (c) above, (e) money market instruments, commercial paper or other short-term obligations rated at least A-2 or the equivalent thereof by S&P or at least P-2 or the equivalent thereof by Moody's (or if at such time neither is issuing ratings, then a comparable rating of another nationally recognized rating agency) issued by any Person not an Affiliate of the Borrower, (f) investments in money market funds subject to the risk limiting conditions of Rule 2a-7 or any successor rule of the SEC under the Investment Company Act of 1940, as amended, (g) investments similar to any of the foregoing denominated in foreign currencies approved by the Board of Directors, but not exceeding in the aggregate at any time 10.0% of the aggregate Fair Market Value of the Cash Equivalents of the Borrower and its Restricted Subsidiaries, and (h) solely with respect to any Captive Insurance Subsidiary, any investment that person is permitted to make in accordance with applicable law.

"Change in Law": as defined in Subsection 4.11(a).

"Change of Control: (a) Permitted Holders fail to own and control, directly or indirectly, 60.0%, or more, of the Capital Stock of Borrower having the right to vote for the election of members of the Board of Directors, (b) Borrower fails to own and control, directly or indirectly, 100% of the Capital Stock of each other Loan Party, (c) a "Change of Control" as defined in the ABL Credit Agreement has occurred, or (d) a "Change of Control" as defined in the Senior Term Debt Credit Agreement has occurred.

"Closing Date": the date on which all the conditions precedent set forth in Subsection 6.1 shall be satisfied or waived.

"Code": the Internal Revenue Code of 1986, as amended from time to time.

"Collateral": all assets of the Loan Parties, now owned or hereafter acquired, upon which a Lien is purported to be created by any Security Document.

"Collateral Agent": as defined in the Preamble hereto and shall include any successor to the Collateral Agent appointed pursuant to Subsection 10.6.

"Committed Loan Notice": a notice of (i) a Borrowing, (ii) a conversion of Term Loans from one Type to the other or (iii) a continuation of Eurodollar Loans, pursuant to Subsection 4.2, which shall be substantially in the form of Exhibit L.

"Commodities Agreement": in respect of a Person, any commodity futures contract, forward contract, option or similar agreement or arrangement (including derivative agreements or arrangements), as to which such Person is a party or beneficiary.

"Commonly Controlled Entity": an entity, whether or not incorporated, which is under common control with the Borrower within the meaning of Section 4001 of ERISA or is part of a group which includes the Borrower and which 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 Sections 414(m) and (o) of the Code.

"Compliance Certificate": as defined in Subsection 7.2(b).

"Confirmation Order": as defined in Subsection 6.1(b).

"Consolidated Coverage Ratio": as of any date of determination, the ratio of (i) the aggregate amount of Consolidated EBITDA for the Most Recent Four Quarter Period to (ii) Consolidated Interest Expense for such Most Recent Four Quarter Period; provided that

(1) if, since the beginning of such period, the Borrower or any Restricted Subsidiary has Incurred any Indebtedness that remains outstanding on such date of determination or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio is an Incurrence of Indebtedness, Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Indebtedness as if such Indebtedness had been Incurred on the first day of such period (except that in making such computation, the amount of Indebtedness under any revolving credit facility outstanding on the date of such calculation shall be computed based on (A) the average daily balance of such Indebtedness during such four fiscal quarters or such shorter period for which such facility was outstanding or (B) if such facility was created after the end of such four fiscal quarters, the average daily balance of such Indebtedness during the period from the date of creation of such facility to the date of such calculation),

(2) if, since the beginning of such period, the Borrower or any Restricted Subsidiary has repaid, repurchased, redeemed, defeased or otherwise acquired, retired or discharged any Indebtedness that is no longer outstanding on such date of determination (each, a "Discharge") or if the transaction giving rise to the need to calculate the Consolidated Coverage Ratio involves a Discharge of Indebtedness (in each case other than Indebtedness Incurred under any revolving credit facility unless such Indebtedness has been permanently repaid), Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving effect on a pro forma basis to such Discharge of such Indebtedness, including with the proceeds of such new Indebtedness, as if such Discharge had occurred on the first day of such period,

(3) if, since the beginning of such period, the Borrower or any Restricted Subsidiary shall have disposed of any company, any business or any group of assets constituting an operating unit of a business (any such disposition, a "Sale"), the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets that are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period and Consolidated Interest Expense for such period shall be reduced by an amount equal to (A) the Consolidated Interest Expense attributable to any Indebtedness of the Borrower or any Restricted Subsidiary repaid, repurchased, redeemed, defeased or otherwise acquired, retired or discharged with respect to the Borrower and its continuing Restricted Subsidiaries in connection with such Sale for such period (including but not limited to through the assumption of such Indebtedness by another Person) plus (B) if the Capital Stock of any Restricted Subsidiary is sold, the Consolidated Interest Expense for such period attributable to the Indebtedness of such Restricted Subsidiary to the extent the Borrower and its continuing Restricted Subsidiaries are no longer liable for such Indebtedness after such Sale,

(4) if, since the beginning of such period, the Borrower or any Restricted Subsidiary (by merger, consolidation or otherwise) shall have made an Investment in any Person that thereby becomes a Restricted Subsidiary, or otherwise acquired any company, any business or any group of assets constituting an operating unit of a business, including any such Investment or acquisition occurring in connection with a transaction causing a calculation to be made hereunder (any such Investment or acquisition, a "Purchase"), Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto (including the Incurrence of any related Indebtedness) as if such Purchase occurred on the first day of such period, and

(5) if, since the beginning of such period, any Person became a Restricted Subsidiary or was merged or consolidated with or into the Borrower or any Restricted Subsidiary, and since the beginning of such period such Person shall have Discharged any Indebtedness or made any Sale or Purchase that would have required an adjustment pursuant to clause (2), (3) or (4) above if made by the Borrower or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA and Consolidated Interest Expense for such period shall be calculated after giving pro forma effect thereto as if such Discharge, Sale or Purchase occurred on the first day of such period; and provided for purposes of the Incurrence of Indebtedness under Subsection 8.1(a) only, that (in the event that the Borrower shall classify Indebtedness Incurred on the date of determination as Incurred in part under Subsection 8.1(a) and in part under Subsection 8.1(b), as provided in Subsection 8.1(c)(iii)) any such pro forma calculation of Consolidated Interest Expense on such date of determination only shall not give effect to any such Incurrence of Indebtedness on the date of determination pursuant to Subsection 8.1(b) or to any Discharge of Indebtedness from the proceeds of any such Incurrence pursuant to such Subsection 8.1(b).

For purposes of this definition, whenever pro forma effect is to be given to any Sale, Purchase or other transaction, or the amount of income or earnings relating thereto and the amount of Consolidated Interest Expense associated with any Indebtedness Incurred or repaid, repurchased, redeemed, defeased or otherwise acquired, retired or discharged in connection therewith, the pro forma calculations in respect thereof (including without limitation in respect of

anticipated cost savings or synergies relating to any such Sale, Purchase or other transaction) shall be as determined in good faith by the Chief Financial Officer or a Responsible Officer of the Borrower; provided that with respect to cost savings or synergies relating to any Sale, Purchase or other transaction, the related actions are expected by the Borrower to be taken no later than 12 months after the date of determination (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected to have a continuing impact directly attributable to such Sale, Purchase or other transaction and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within 12 months after the consummation of such Sale, Purchase or other transaction, which is expected to result in such cost savings, expense reductions or synergies, and (ii) the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this proviso for any four consecutive quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this proviso)) (which adjustment shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated EBITDA", "Consolidated Secured Leverage Ratio" or "Consolidated Total Leverage Ratio"). If any Indebtedness bears a floating rate of interest and is being given pro forma effect, the interest expense on such Indebtedness shall be calculated as if the rate in effect on the date of determination had been the applicable rate for the entire period (taking into account any Hedge Agreement applicable to such Indebtedness). If any Indebtedness bears, at the option of the Borrower or a Restricted Subsidiary, a rate of interest based on a prime or similar rate, a eurocurrency interbank offered rate or other fixed or floating rate, and such Indebtedness is being given pro forma effect, the interest expense on such Indebtedness shall be calculated by applying such optional rate as the Borrower or such Restricted Subsidiary may designate. If any Indebtedness that is being given pro forma effect was incurred under a revolving credit facility, the interest expense on such Indebtedness shall be computed based upon the average daily balance of such Indebtedness during the applicable period. Interest on a Capitalized Lease Obligation shall be deemed to accrue at an interest rate determined in good faith by a responsible financial or accounting officer of the Borrower to be the rate of interest implicit in such Capitalized Lease Obligation in accordance with GAAP.

"Consolidated EBITDA": for any period, the Consolidated Net Income for such period, plus (x) the following to the extent deducted in calculating such Consolidated Net Income, without duplication: (i) provision for all taxes (whether or not paid, estimated or accrued) based on income, profits or capital (including penalties and interest, if any), (ii) Consolidated Interest Expense, (iii) depreciation, (iv) amortization (including but not limited to amortization of goodwill and intangibles and amortization and write-off of financing costs), (v) any non-cash charges or non-cash losses (but excluding any non-cash charge or non-cash loss that relates to the write-down or write-off of Inventory or Receivables), (vi) any expenses or charges related to any equity offering, Investment or Indebtedness permitted by this Agreement (whether or not consummated or incurred, and including any offering or sale of Capital Stock to the extent the proceeds thereof were intended to be contributed to the equity capital of the Borrower or its Restricted Subsidiaries), (vii) the amount of any minority interest expense consisting of items of income or gain attributable to non-controlling interests of third parties in non-Wholly Owned Restricted Subsidiaries, (viii) all deferred financing costs written off and premiums paid in connection with any early extinguishment of Hedging Obligations or other

derivative instruments (ix) costs and expenses incurred in connection with the Bankruptcy Case and the Transactions, in an aggregate amount not to exceed $[_____] during the term of the Facility and (x) business optimization expenses and restructuring charges and reserves (which, for the avoidance of doubt, shall include retention, severance, contract termination costs and costs to consolidate facilities and relocate employees) in an amount not to exceed (A) $[_____] in any four (4) consecutive quarter period and (B) $[_____] during the term of the Facility, plus (y) the amount of net cost savings projected by the Borrower in good faith to be realized as the result of actions taken or to be taken on or prior to the date that is twelve (12) months after the consummation of any operational change, and prior to or during such period (calculated on a pro forma basis as though such cost savings had been realized on the first day of such period), net of the amount of actual benefits realized during such period from such actions (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings are reasonably expected to have a continuing impact directly attributable to such operational change and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within twelve (12) months after the consummation of such operational change, which is expected to result in such cost savings and (ii) that the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this clause (y) for any four consecutive quarter period shall not exceed ten-percent (10%) of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this clause (y))) (which adjustments shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated Coverage Ratio," "Consolidated Secured Leverage Ratio" or "Consolidated Total Leverage Ratio") minus (z) the amount of any minority interest income consisting of items of expense or loss attributable to non-controlling interests of third parties in non-Wholly Owned Restricted Subsidiaries.

"Consolidated Interest Expense": for any period, (i) the total interest expense of the Borrower and its Restricted Subsidiaries to the extent deducted in calculating Consolidated Net Income, net of any interest income of the Borrower and its Restricted Subsidiaries, including without limitation, any such interest expense consisting of (A) interest expense attributable to Capitalized Lease Obligations, (B) amortization of debt discount, (C) interest in respect of Indebtedness of any other Person that has been Guaranteed by the Borrower or any Restricted Subsidiary, but only to the extent that such interest is actually paid by the Borrower or any Restricted Subsidiary, (D) non-cash interest expense, (E) the interest portion of any deferred payment obligation, and (F) commissions, discounts and other fees and charges owed with respect to letters of credit and bankers' acceptance financing, plus (ii) Preferred Stock dividends paid in cash in respect of Disqualified Stock of the Borrower held by Persons other than the Borrower or a Restricted Subsidiary, and minus (iii) to the extent otherwise included in such interest expense referred to in clause (i) above, amortization or write-off of financing costs, in each case under clauses (i) through (iii) above as determined on a consolidated basis in accordance with GAAP; provided that gross interest expense shall be determined after giving effect to any net payments made or received by the Borrower and its Restricted Subsidiaries with respect to Interest Rate Agreements.

"Consolidated Net Income": for any period, the net income (loss) of the Borrower and its Restricted Subsidiaries, determined on a consolidated basis in accordance with

GAAP and before any reduction in respect of Preferred Stock dividends; provided that there shall not be included in such Consolidated Net Income:

(i) any net income (loss) of any Person if such Person is not the Borrower or a Restricted Subsidiary, except that (A) the Borrower's or any Restricted Subsidiary's equity in the net income of any such Person for such period shall be included in such Consolidated Net Income up to the aggregate amount actually distributed by such Person during such period to the Borrower or a Restricted Subsidiary as a dividend or other distribution (subject, in the case of a dividend or other distribution to a Restricted Subsidiary, to the limitations contained in clause (ii) below) and (B) the Borrower's or any Restricted Subsidiary's equity in the net loss of such Person shall be included to the extent of the aggregate Investment of the Borrower or any of its Restricted Subsidiaries in such Person,

(ii) [reserved],

(iii) (x) any gain or loss realized upon the sale, abandonment or other disposition of any asset of the Borrower or any Restricted Subsidiary (including pursuant to any sale/leaseback transaction) that is not sold, abandoned or otherwise disposed of in the ordinary course of business (as determined in good faith by the Board of Directors) and (y) any gain or loss realized upon the disposal, abandonment or discontinuation of operations of the Borrower or any Restricted Subsidiary, and any income (loss) from disposed, abandoned or discontinued operations, including in each case any closure of any branch,

(iv) any extraordinary, unusual or nonrecurring gain, loss or charge (including fees, expenses and charges associated with the Transactions and any acquisition, merger or consolidation after the Closing Date),

(v) the cumulative effect of a change in accounting principles,

(vi) all deferred financing costs written off and premiums paid in connection with any early extinguishment of Indebtedness or Hedging Obligations or other derivative instruments,

(vii) any unrealized gains or losses in respect of Hedge Agreements,

(viii) any unrealized foreign currency transaction gains or losses in respect of Indebtedness of any Person denominated in a currency other than the functional currency of such Person,

(ix) any non-cash compensation charge arising from any grant of stock, stock options or other equity based awards,

(x) to the extent otherwise included in Consolidated Net Income, any unrealized foreign currency translation or transaction gains or losses in respect of Indebtedness or other obligations of the Borrower or any Restricted Subsidiary owing to the Borrower or any Restricted Subsidiary,

(xi) any non-cash charge, expense or other impact attributable to application of the purchase or recapitalization method of accounting (including the total amount of depreciation and amortization, cost of sales or other non-cash expense resulting from the write-up of assets to the extent resulting from such purchase or recapitalization accounting adjustments), and

(xii) non-cash compensation related expenses.

In the case of any unusual or nonrecurring gain, loss or charge not included in Consolidated Net Income pursuant to clause (iv) above in any determination thereof, the Borrower will deliver a certificate of a Responsible Officer to the Administrative Agent promptly after the date on which Consolidated Net Income is so determined, setting forth the nature and amount of such unusual or nonrecurring gain, loss or charge.

"Consolidated Secured Indebtedness": as of any date of determination, (i) an amount equal to the Consolidated Total Indebtedness (without regard to clause (ii) of the definition thereof) as of such date that in each case is then secured by Liens on property or assets of the Borrower and its Restricted Subsidiaries (other than property or assets held in a defeasance or similar trust or arrangement for the benefit of the Indebtedness secured thereby), minus (ii) Unrestricted Cash in an amount not to exceed $5,000,000.

"Consolidated Secured Leverage Ratio": as of any date of determination, the ratio of (i) Consolidated Secured Indebtedness as at such date (after giving effect to any Incurrence or Discharge of Indebtedness on such date) to (ii) the aggregate amount of Consolidated EBITDA for the Most Recent Four Quarter Period, provided that:

(1) if, since the beginning of such period, the Borrower or any Restricted Subsidiary shall have made a Sale, the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets that are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period;

(2) if, since the beginning of such period, the Borrower or any Restricted Subsidiary (by merger, consolidation or otherwise) shall have made a Purchase (including any Purchase occurring in connection with a transaction causing a calculation to be made hereunder), Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Purchase occurred on the first day of such period; and

(3) if, since the beginning of such period, any Person became a Restricted Subsidiary or was merged or consolidated with or into the Borrower or any Restricted Subsidiary, and since the beginning of such period such Person shall have made any Sale or Purchase that would have required an adjustment pursuant to clause (1) or (2) above if made by the Borrower or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Sale or Purchase occurred on the first day of such period.

For purposes of this definition, whenever pro forma effect is to be given to any Sale, Purchase or other transaction, or the amount of income or earnings relating thereto, the pro

forma calculations in respect thereof (including, without limitation, in respect of anticipated cost savings or synergies relating to any such Sale, Purchase or other transaction) shall be as determined in good faith by the Chief Financial Officer or another Responsible Officer of the Borrower; provided that with respect to cost savings or synergies relating to any Sale, Purchase or other transaction, the related actions are expected by the Borrower to be taken no later than twelve (12) months after the date of determination (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected to have a continuing impact directly attributable to such Sale, Purchase or other transaction and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within twelve (12) months after the consummation of such Sale, Purchase or other transaction, which is expected to result in such cost savings, expense reductions or synergies, and (ii) that the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this proviso for any four consecutive quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated after giving effect to any adjustment pursuant to this proviso)) (which adjustment shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated Coverage Ratio", "Consolidated EBITDA" or "Consolidated Total Leverage Ratio").

"Consolidated Total Assets": as of any date of determination, the total assets in each case of the Borrower and its Restricted Subsidiaries as at the end of the most recently ended fiscal quarter of the Borrower for which such financial statements of the Borrower and its Restricted Subsidiaries are available, determined on a consolidated basis in accordance with GAAP (and, in the case of any determination relating to any Incurrence of Indebtedness or any Investment, on a pro forma basis including any property or assets being acquired in connection therewith).

"Consolidated Total Indebtedness": as of any date of determination, an amount equal to (i) the aggregate principal amount of outstanding Indebtedness of the Borrower and its Restricted Subsidiaries as of such date consisting of (without duplication) Indebtedness for borrowed money (including Purchase Money Obligations and unreimbursed outstanding drawn amounts under letters of credit); Capitalized Lease Obligations; debt obligations evidenced by bonds, debentures, notes or similar instruments; Disqualified Stock; and (in the case of any Restricted Subsidiary that is not a Subsidiary Guarantor) Preferred Stock (valued at the higher of its voluntary or involuntary liquidation value), determined on a consolidated basis in accordance with GAAP (excluding items eliminated in Consolidation, and for the avoidance of doubt, excluding Hedging Obligations); provided that the outstanding principal amount of the Term Loan Facility Obligations shall be excluded from the aggregate principal amount of outstanding Indebtedness of the Borrower and its Restricted Subsidiaries for the purpose of clause (i) of this definition; minus (ii) Unrestricted Cash in an amount not to exceed $5,000,000.

"Consolidated Total Leverage Ratio": as of any date of determination, the ratio of (i) Consolidated Total Indebtedness as at such date (after giving effect to any Incurrence or Discharge of Indebtedness on such date) to (ii) the aggregate amount of Consolidated EBITDA for the Most Recent Four Quarter Period, provided that:

(1) if, since the beginning of such period, the Borrower or any Restricted Subsidiary shall have made a Sale, the Consolidated EBITDA for such period shall be reduced by an amount equal to the Consolidated EBITDA (if positive) attributable to the assets that are the subject of such Sale for such period or increased by an amount equal to the Consolidated EBITDA (if negative) attributable thereto for such period;

(2) if, since the beginning of such period, the Borrower or any Restricted Subsidiary (by merger, consolidation or otherwise) shall have made a Purchase (including any Purchase occurring in connection with a transaction causing a calculation to be made hereunder), Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Purchase occurred on the first day of such period; and

(3) if, since the beginning of such period, any Person became a Restricted Subsidiary or was merged or consolidated with or into the Borrower or any Restricted Subsidiary, and since the beginning of such period such Person shall have made any Sale or Purchase that would have required an adjustment pursuant to clause (1) or (2) above if made by the Borrower or a Restricted Subsidiary since the beginning of such period, Consolidated EBITDA for such period shall be calculated after giving pro forma effect thereto as if such Sale or Purchase occurred on the first day of such period; and provided that, for purposes of the foregoing calculation, in the event that the Borrower shall classify Indebtedness Incurred on the date of determination as Incurred in part pursuant to Subsection 8.1(b)(x) (other than by reason of subclause (2) of the proviso to such clause (x)) and in part pursuant to one or more other clauses of Subsection 8.1(b) and/or pursuant to Subsection 8.1(a) (as provided in Subsections 8.1(c)(ii) and (iii)), Consolidated Total Indebtedness on such date of determination shall not include any such Indebtedness Incurred pursuant to one or more such other clauses of Subsection 8.1(b) and/or pursuant to Subsection 8.1(a), and shall not give effect to any Discharge of any Indebtedness from the proceeds thereof that otherwise would be included in Consolidated Total Indebtedness.

For purposes of this definition, whenever pro forma effect is to be given to any Sale, Purchase or other transaction, or the amount of income or earnings relating thereto, the pro forma calculations in respect thereof (including, without limitation, in respect of anticipated cost savings or synergies relating to any such Sale, Purchase or other transaction) shall be as determined in good faith by the Chief Financial Officer or another Responsible Officer of the Borrower; provided that with respect to cost savings or synergies relating to any Sale, Purchase or other transaction, the related actions are expected by the Borrower to be taken no later than twelve (12) months after the date of determination (provided that (i) a duly completed certificate signed by a Responsible Officer of the Borrower shall be delivered to the Administrative Agent, certifying that (x) such cost savings, operating expense reductions and synergies are reasonably expected to have a continuing impact directly attributable to such Sale, Purchase or other transaction and are factually supportable in the good faith judgment of the Borrower and (y) such actions are to be taken within twelve (12) months after the consummation of such Sale, Purchase or other transaction, which is expected to result in such cost savings, expense reductions or synergies, and (ii) that that the aggregate amount of such net cost savings included in Consolidated EBITDA pursuant to this proviso for any four consecutive quarter period shall not exceed 10% of Consolidated EBITDA for such period (calculated after giving effect to any

adjustment pursuant to this proviso)) (which adjustment shall not be duplicative of pro forma adjustments made pursuant to the proviso to the definition of "Consolidated Coverage Ratio," "Consolidated EBITDA" or "Consolidated Secured Leverage Ratio").

"Consolidated Working Capital": at any date, the excess of (a) the sum of all amounts (other than cash, Cash Equivalents and Temporary Cash Investments) that would, in conformity with GAAP, be set forth opposite the caption "total current assets" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries at such date excluding the current portion of current and deferred income taxes over (b) the sum of all amounts that would, in conformity with GAAP, be set forth opposite the caption "total current liabilities" (or any like caption) on a consolidated balance sheet of the Borrower and the Restricted Subsidiaries on such date, including deferred revenue but excluding, without duplication, (i) the current portion of any Funded Debt, (ii) all Indebtedness consisting of Loans to the extent otherwise included therein, (iii) the current portion of interest and (iv) the current portion of current and deferred income taxes.

"Consolidation": the consolidation of the accounts of each of the Restricted Subsidiaries with those of the Borrower in accordance with GAAP; provided that "Consolidation" will not include consolidation of the accounts of any Unrestricted Subsidiary, but the interest of the Borrower or any Restricted Subsidiary in any Unrestricted Subsidiary will be accounted for as an investment. The term "Consolidated" has a correlative meaning.

"Contractual Obligation": as to any Person, any provision of any material security issued by such Person or of any material agreement, instrument or other undertaking to which such Person is a party or by which it or any of its property is bound.

"Control": 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 ability to exercise voting power, by contract or otherwise. "Controlling" and "Controlled" have meanings correlative thereto.

"Control Agreement": a control agreement, in form and substance reasonably satisfactory to the Collateral Agent, executed and delivered by Borrower or one of its Subsidiaries, Collateral Agent, and the applicable securities intermediary (with respect to a Securities Account) or bank (with respect to a Deposit Account).

"Controlled Investment Affiliates": as to any Permitted Holder, (a) the controlling member, general partner, manager or investment manager and controlled affiliates of such Permitted Holder, (b) any fund or investment vehicle with the same general partner, manager or investment manager as such Permitted Holder or a general partner, manager or investment manager affiliated with such general partner, manager or investment manager, and (c) any other Person that directly or indirectly through one or more intermediaries, Controls, is Controlled by, or is under common Control with such Permitted Holder, the general partner of such Person, investment manager of such Person or controlled affiliate of such Person, general partner or investment manager.

"Cortland": Cortland Capital Market Services LLC, and its successors.

"Currency Agreement": in respect of a Person, any foreign exchange contract, currency swap agreement or other similar agreement or arrangements (including derivative agreements or arrangements), as to which such Person is a party or a beneficiary.

"Debtor Relief Law": the Bankruptcy Code of the United States, and all other liquidation, conservatorship, bankruptcy, assignment for the benefit of creditors, moratorium, rearrangement, receivership, insolvency, reorganization, or similar debtor relief laws of the United States or other applicable jurisdictions from time to time in effect.

"Default": any of the events specified in Subsection 9.1, whether or not any requirement for the giving of notice (other than, in the case of Subsection 9.1(e), a Default Notice), the lapse of time, or both, or any other condition specified in Subsection 9.1, has been satisfied.

"Default Notice": as defined in Subsection 9.1(e).

"Defaulting Lender": subject to Subsection 2.9(b), any Lender that (i) has failed (A) to fund all or any portion of its Term Loans within two (2) Business Days of the date such Term Loans were required to be funded hereunder unless such Lender notifies the Administrative Agent and the 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 (B) to pay to the Administrative Agent or any other Lender any other amount required to be paid by it hereunder within two (2) Business Days of the date when due, (ii) has notified the 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), (iii) has failed, within three (3) Business Days after written request by the Administrative Agent or the Borrower, to confirm in writing to the Administrative Agent and the 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 (iii) upon receipt of such written confirmation by the Administrative Agent and the Borrower), or (iv) has, or has a direct or indirect parent company that has, (A) become the subject of a proceeding under any Debtor Relief Law, or (B) had appointed for it a receiver, custodian, conservator, trustee, administrator, assignee for the benefit of creditors or similar Person charged with reorganization or liquidation of its business or assets, including the Federal Deposit Insurance Corporation or any other state or federal regulatory authority acting in such a capacity; provided that a Lender shall not be a Defaulting Lender solely by virtue of the ownership or acquisition of any Capital Stock 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 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 (i)

through (iv) above, and of the effective date of such status, shall be conclusive and binding absent manifest error, and such Lender shall be deemed to be a Defaulting Lender (subject to Subsection 2.9(b)) as 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 Borrower and each other Lender promptly following such determination.

"Deposit Account": any deposit account (as such term is defined in Article 9 of the UCC).

"Designated Noncash Consideration": the Fair Market Value of noncash consideration received by the Borrower or one of its Restricted Subsidiaries in connection with an Asset Disposition that is so designated as Designated Noncash Consideration pursuant to a certificate of a Responsible Officer, setting forth the basis of such valuation.

"Designation Date": as defined in Subsection 2.8(f).

"Discharge": as defined in clause (2) of the definition of "Consolidated Coverage Ratio".

"Disqualified Stock": with respect to any Person, any Capital Stock (other than Management Stock that is common stock) that by its terms (or by the terms of any security into which it is convertible or for which it is exchangeable or exercisable) or upon the happening of any event (other than following the occurrence of a Change of Control or other similar event described under such terms as a "change of control" or an Asset Disposition) (i) matures or is mandatorily redeemable pursuant to a sinking fund obligation or otherwise, (ii) is convertible or exchangeable for Indebtedness or Disqualified Stock or (iii) is redeemable at the option of the holder thereof (other than following the occurrence of a Change of Control or other similar event described under such terms as a "change of control" or an Asset Disposition), in whole or in part, in each case on or prior to the date that is six (6) months after the Maturity Date; provided that Capital Stock issued to any employee benefit plan, or by any such plan to any employees of the Borrower or any Subsidiary, shall not constitute Disqualified Stock solely because it may be required to be repurchased or otherwise acquired or retired in order to satisfy applicable statutory or regulatory obligations.

"Dollars" and "$": dollars in lawful currency of the United States of America.

"Domestic Subsidiary": any Subsidiary of the Borrower which is not a Foreign Subsidiary.

"ECF Payment Date": as defined in Subsection 4.4(c).

"Encana": Encana Oil & Gas (USA) Inc. and its permitted successors and assigns.

"Encana Intercreditor Agreement": an intercreditor agreement, dated as of the Closing Date, executed and delivered by Borrower, each of its Subsidiaries, Encana and the Collateral Agent, substantially in the form of Exhibit M hereto, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Environmental Costs": any and all costs or expenses (including attorney's and consultant's fees, investigation and laboratory fees, response costs, court costs and litigation expenses, fines, penalties, damages, settlement payments, judgments and awards), of whatever kind or nature, known or unknown, contingent or otherwise, arising out of, or in any way relating to, any actual or alleged violation of, noncompliance with or liability under any Environmental Laws. Environmental Costs include any and all of the foregoing, without regard to whether they arise out of or are related to any past, pending or threatened proceeding of any kind.

"Environmental Laws": any and all U.S. or foreign, federal, state, provincial, territorial, local or municipal laws, rules, orders, enforceable guidelines and orders-in-council, regulations, statutes, ordinances, codes, decrees, and such requirements of any Governmental Authority properly promulgated and having the force and effect of law or other Requirements of Law (including common law) regulating, relating to or imposing liability or standards of conduct concerning protection of human health (as it relates to exposure to Materials of Environmental Concern) or the environment, as have been, or now or at any relevant time hereafter are, in effect.

"Environmental Permits": any and all permits, licenses, registrations, notifications, exemptions and any other authorization required under any Environmental Law.

"ERISA": the Employee Retirement Income Security Act of 1974, as amended from time to time.

"Eurodollar Loans": Loans the rate of interest applicable to which is based upon the Adjusted LIBOR Rate.

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

"Event of Default": any of the events specified in Subsection 9.1, provided that any requirement for the giving of notice, the lapse of time, or both, or any other condition, has been satisfied.

"Exchange Act": the Securities Exchange Act of 1934, as amended from time to time.

"Excluded Assets": as defined in the Guarantee and Collateral Agreement.

"Excluded Contribution": Net Cash Proceeds, or the Fair Market Value of property or assets, received by the Borrower as capital contributions to the Borrower after the Closing Date or from the issuance or sale (other than to a Restricted Subsidiary) of Capital Stock

(other than Disqualified Stock) of the Borrower, in each case to the extent designated as an Excluded Contribution pursuant to a certificate of a Responsible Officer of the Borrower.

"Excluded Subsidiary": at any date of determination, any Subsidiary of the Borrower designated as such in writing by the Borrower to the Administrative Agent:

(a) that is an Immaterial Subsidiary;

(b) that is prohibited by Requirement of Law or by Contractual Obligations existing on the Closing Date (or, in the case of any newly acquired Subsidiary, in existence at the time of acquisition but not entered into in contemplation thereof) from Guaranteeing or granting Liens to secure the Term Loan Facility Obligations or if Guaranteeing or granting Liens to secure the Term Loan Facility Obligations would require governmental (including regulatory) consent, approval, license or authorization unless such consent, approval, license or authorization has been received;

(c) [Reserved];

(d) with respect to which the provision of such guarantee of the Term Loan Facility Obligations would result in material adverse tax consequences to the Borrower or one of its Subsidiaries or any Parent Entity or any of its successors or assigns (as reasonably determined by the Borrower and notified in writing to the Administrative Agent);

(e) that is a Subsidiary of a Foreign Subsidiary;

(f) that is a joint venture or Non-Wholly Owned Subsidiary, but only to the extent that the Organizational Documents or other agreements with equity or debt holders of such joint venture or Non-Wholly Owned Subsidiary (x) do not permit such entity to guarantee or grant Liens to secure the Term Loan Facility Obligations, or (y) permit such entity to guarantee or grant Liens to secure the Term Loan Facility Obligations subject to obtaining certain consents and the Borrower has used its commercially reasonable efforts to obtain such consents and such consents have not been obtained;

(g) that is an Unrestricted Subsidiary;

(h) that is a Captive Insurance Subsidiary;

(i) [Reserved]; or

(j) that is a Subsidiary formed solely for the purpose of becoming a Parent Entity, or merging with the Borrower in connection with another Subsidiary becoming a Parent Entity, or otherwise creating or forming a Parent Entity;

provided that, notwithstanding the foregoing, any Domestic Subsidiary that Guarantees the payment of the ABL Indebtedness, is a Borrower under the ABL Credit Agreement, Guarantees the payment of Senior Term Debt under the Senior Term Debt Documents or is a Borrower under the Senior Term Debt Credit Agreement shall not be an Excluded Subsidiary. Subject to

the proviso in the preceding sentence, any Subsidiary so designated as an Excluded Subsidiary that fails to meet the foregoing requirements as of the last day of the Most Recent Four Quarter Period shall continue to be deemed an Excluded Subsidiary hereunder until the date that is sixty (60) days following the date on which such annual or quarterly financial statements were required to be delivered pursuant to Subsection 7.1 with respect to such Most Recent Four Quarter Period.

"Excluded Taxes": (a) any Taxes measured by or imposed upon the net income of any Agent or Lender or its applicable lending office, or any branch or affiliate thereof, and all franchise Taxes, branch Taxes, Taxes on doing business or Taxes measured by or imposed upon the overall capital or net worth of any such Agent or Lender or its applicable lending office, or any branch or affiliate thereof, in each case imposed: (i) by the jurisdiction under the laws of which such Agent or Lender, applicable lending office, branch or affiliate is organized or is located, or in which its principal executive office is located, or any nation within which such jurisdiction is located or any political subdivision thereof; or (ii) by reason of any connection between the jurisdiction imposing such Tax and such Agent or Lender, applicable lending office, branch or affiliate other than a connection arising solely from such Agent or Lender having executed, delivered or performed its obligations under, or received payment under or enforced, this Agreement or any Notes, and (b) any Tax imposed by FATCA.

"Existing Capitalized Lease Obligations": Capitalized Lease Obligations of the Borrower and its Restricted Subsidiaries existing on the Closing Date and disclosed on Schedule 1.1(a).

"Existing Indebtedness": Indebtedness for borrowed money of the Borrower and its Restricted Subsidiaries outstanding on the Closing Date and disclosed on Schedule 1.1(b).

"Existing Term Loans": as defined in Subsection 2.8(a).

"Existing Term Tranche": as defined in Subsection 2.8(a).

"Extended Loans": as defined in Subsection 2.8(a).

"Extended Term Loans": as defined in Subsection 2.8(a).

"Extended Term Tranche": as defined in Subsection 2.8(a).

"Extending Lender": as defined in Subsection 2.8(b).

"Extension": as defined in Subsection 2.8(b).

"Extension Amendment": as defined in Subsection 2.8(c).

"Extension Date": as defined in Subsection 2.8(d).

"Extension Election": as defined in Subsection 2.8(b).

"Extension of Credit": as to any Lender, the making of a Loan.

"Extension Request": as defined in Subsection 2.8(a).

"Extension Series": all Extended Loans that are established pursuant to the same Extension Amendment (or any subsequent Extension Amendment to the extent such Extension Amendment expressly provides that the Extended Loans provided for therein are intended to be part of any previously established Extension Series) and that provide for the same interest margins and amortization schedule.

"Extraordinary Receipts": any payments received by a Loan Party or any of its Subsidiaries not in the ordinary course of business (and not consisting of proceeds of Asset Dispositions or Recovering Events) consisting of (a) proceeds of judgments, proceeds of settlements or other consideration of any kind in connection with any cause of action, (b) indemnity payments (other than to the extent such indemnity payments are (i) immediately payable to a Person that is not an Affiliate of the Borrower or any of its Subsidiaries, or (ii) received by a Loan Party or any of its Subsidiaries as reimbursement for any payment previously made to such Person), and (c) any purchase price adjustment (other than a working capital adjustment) received in connection with any purchase agreement.

"Facility": each of (a) the Initial Term Loan Commitments and the Extensions of Credit made thereunder and (b) any other committed facility hereunder and the Extensions of Credit made thereunder.

"Fair Market Value": with respect to any asset or property, the fair market value of such asset or property as determined in good faith by the Board of Directors, whose determination will be conclusive.

"FATCA": Sections 1471 through 1474 of the Code as in effect on the Closing Date (and any amended or successor provisions that are substantially comparable), and any regulations or other administrative authority promulgated thereunder or any agreement (including any intergovernmental agreement) entered into thereunder or in furtherance thereof.

"Federal District Court": as defined in Subsection 11.13(a).

"Federal Funds Effective Rate": for any day, the rate per annum equal to the weighted average of the rates on overnight federal funds transactions with members of the Federal Reserve System arranged by Federal funds brokers on such day, as published by the Federal Reserve Bank of New York on the Business Day next succeeding such day; provided that (i) if such day is not a Business Day, the Federal Funds Effective Rate for such day shall be such rate on such transactions on the next preceding Business Day as so published on the next succeeding Business Day, and (ii) if no such rate is so published on such next succeeding Business Day, the Federal Funds Effective Rate for such day shall be the average rate (rounded upward, if necessary, to a whole multiple of 1/100 of 1%) of the quotations for such day for such transactions received by the Administrative Agent from three Federal funds brokers of recognized standing selected by it.

"FIRREA": the Financial Institutions Reform, Recovery and Enforcement Act of 1989, as amended from time to time.

"Fiscal Year": any period of twelve (12) consecutive months ending on December 31st of any calendar year.

"Fixed GAAP Date": the Closing Date, provided that at any time after the Closing Date, the Borrower may by written notice to the Administrative Agent elect to change the Fixed GAAP Date to be the date specified in such notice, and upon such notice, the Fixed GAAP Date shall be such date for all periods beginning on and after the date specified in such notice.

"Fixed GAAP Terms": (a) the definitions of the terms "Borrowing Base", "Capital Expenditures", "Capitalized Lease Obligation", "Consolidated Coverage Ratio", "Consolidated EBITDA", "Consolidated Secured Leverage Ratio", "Consolidated Interest Expense", "Consolidated Net Income", "Consolidated Total Leverage Ratio", "Consolidated Secured Indebtedness", "Consolidated Total Assets", "Consolidated Total Indebtedness", "Consolidated Working Capital", "Consolidation", "Inventory" or "Receivables", (b) all defined terms in this Agreement to the extent used in or relating to any of the foregoing definitions, and all ratios and computations based on any of the foregoing definitions, and (c) any other term or provision of this Agreement or the Loan Documents that, at the Borrower's election, may be specified by the Borrower by written notice to the Administrative Agent from time to time.

"Foreign Pension Plan": a registered pension plan which is subject to applicable pension legislation other than ERISA or the Code, which a Restricted Subsidiary sponsors or maintains, or to which it makes or is obligated to make contributions.

"Foreign Plan": each Foreign Pension Plan, deferred compensation or other retirement or superannuation plan, fund, program, agreement, commitment or arrangement whether oral or written, funded or unfunded, sponsored, established, maintained or contributed to, or required to be contributed to, or with respect to which any liability is borne, outside the United States of America, by the Borrower or any of its Restricted Subsidiaries, other than any such plan, fund, program, agreement or arrangement sponsored by a Governmental Authority.

"Foreign Subsidiary": any Subsidiary of the Borrower which is organized and existing under the laws of any jurisdiction outside of the United States of America or that is a Foreign Subsidiary Holdco. Any subsidiary of the Borrower which is organized and existing under the laws of Puerto Rico or any other territory of the United States of America shall be a Foreign Subsidiary.

"Foreign Subsidiary Holdco": any Restricted Subsidiary of the Borrower, so long as such Restricted Subsidiary has no material assets other than securities or Indebtedness of one or more Foreign Subsidiaries (or Subsidiaries thereof), and intellectual property relating to such Foreign Subsidiaries (or Subsidiaries thereof) and other assets (including cash, Cash Equivalents or Temporary Cash Investments) relating to an ownership interest in any such securities, Indebtedness, intellectual property or Subsidiaries; provided, that no Subsidiary of the Borrower shall be a "Foreign Subsidiary Holdco" if such Subsidiary is not a "Foreign Subsidiary Holdco" (or comparable term) for purposes of the ABL Facility and the Senior Term Facility.

"Funded Debt": all Indebtedness of the Borrower and the Restricted Subsidiaries for borrowed money that matures more than one year from the date of its creation or matures within one year from such date that is renewable or extendable, at the option of the Borrower or any Restricted Subsidiary, to a date more than one year from such date or arises under a revolving credit or similar agreement that obligates the lender or lenders to extend credit during a period of more than one year from such date, including all amounts of such debt required to be paid or prepaid within one year from the date of its creation, and, in the case of the Borrower, Indebtedness in respect of the Term Loans, the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements.

"GAAP": generally accepted accounting principles in the United States of America as in effect on the Fixed GAAP Date (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Agreement), including those set forth in the opinions and pronouncements of the Accounting Principles Board of the American Institute of Certified Public Accountants and statements and pronouncements of the Financial Accounting Standards Board or in such other statements by such other entity as approved by a significant segment of the accounting profession, and subject to the following sentence. If at any time the SEC permits or requires U.S. domiciled companies subject to the reporting requirements of the Exchange Act to use IFRS in lieu of GAAP for financial reporting purposes, the Borrower may elect by written notice to the Administrative Agent to so use IFRS in lieu of GAAP and, upon any such notice, references herein to GAAP shall thereafter be construed to mean (a) for periods beginning on and after the date specified in such notice, IFRS as in effect on the date specified in such notice (for purposes of the Fixed GAAP Terms) and as in effect from time to time (for all other purposes of this Agreement) and (b) for prior periods, GAAP as defined in the first sentence of this definition. All ratios and computations based on GAAP contained in this Agreement shall be computed in conformity with GAAP.

"Governmental Authority": the government of the United States or any other nation, or of any political subdivision thereof, whether state or local, and any agency, authority, instrumentality, regulatory body, court, central bank or other entity exercising executive, legislative, judicial, taxing, regulatory or administrative powers or functions of or pertaining to government (including any supranational bodies such as the European Union or the European Central Bank).

"Guarantee": any obligation, contingent or otherwise, of any Person directly or indirectly guaranteeing any Indebtedness or other obligation of any other Person; provided that the term "Guarantee" shall not include endorsements for collection or deposit in the ordinary course of business. The term "Guarantee" used as a verb has a corresponding meaning.

"Guarantee and Collateral Agreement": the Guarantee and Collateral Agreement delivered to the Collateral Agent as of the date hereof, substantially in the form of Exhibit B hereto, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Guarantee Obligation": as to any Person (the "guaranteeing person"), any obligation of (a) the guaranteeing person or (b) another Person (including any bank under any letter of credit) to induce the creation of which the guaranteeing person has issued a

reimbursement, counterindemnity or similar obligation, in either case guaranteeing or in effect guaranteeing any Indebtedness, leases, dividends or other obligations (the "primary obligations") of any other third Person (the "primary obligor") in any manner, whether directly or indirectly, including any such obligation of the guaranteeing person, whether or not contingent, (i) to purchase any such primary obligation or any property constituting direct or indirect security therefor, (ii) to advance or supply funds (A) for the purchase or payment of any such primary obligation or (B) to maintain working capital or equity capital of the primary obligor or otherwise to maintain the net worth or solvency of the primary obligor, (iii) to purchase property, securities or services primarily for the purpose of assuring the owner of any such primary obligation of the ability of the primary obligor to make payment of such primary obligation or (iv) otherwise to assure or hold harmless the owner of any such primary obligation against loss in respect thereof; provided, however, that the term Guarantee Obligation shall not include endorsements of instruments for deposit or collection in the ordinary course of business. The amount of any Guarantee Obligation of any guaranteeing person shall be deemed to be the lower of (a) an amount equal to the stated or determinable amount of the primary obligation in respect of which such Guarantee Obligation is made and (b) the maximum amount for which such guaranteeing person may be liable pursuant to the terms of the instrument embodying such Guarantee Obligation, unless such primary obligation and the maximum amount for which such guaranteeing person may be liable are not stated or determinable, in which case the amount of such Guarantee Obligation shall be such guaranteeing person's maximum reasonably anticipated liability in respect thereof as determined by the Borrower in good faith.

"Guarantor Subordinated Obligations": with respect to a Subsidiary Guarantor, any Indebtedness of such Subsidiary Guarantor (whether outstanding on the Closing Date or thereafter Incurred) that is expressly subordinated in right of payment to the obligations of such Subsidiary Guarantor under its Subsidiary Guaranty pursuant to a written agreement.

"Guarantors": the collective reference to New Holdings and each Subsidiary Guarantor; individually, a "Guarantor".

"Hedge Agreements": collectively, Interest Rate Agreements, Currency Agreements and Commodities Agreements.

"Hedge Bank": any Person that, at the time it enters into an Interest Rate Agreement, Currency Agreement or a Commodities Agreement permitted under Sections 7 and 8, is a Lender or an Affiliate of a Lender, in its capacity as a party to such Interest Rate Agreement, Currency Agreement or Commodities Agreement.

"Hedging Obligations": as to any Person, the obligations of such Person pursuant to any Interest Rate Agreement, Currency Agreement or Commodities Agreement.

"IFRS": International Financial Reporting Standards and applicable accounting requirements set by the International Accounting Standards Board or any successor thereto (or the Financial Accounting Standards Board, the Accounting Principles Board of the American Institute of Certified Public Accountants, or any successor to either such board, or the SEC, as the case may be), as in effect from time to time.

"Immaterial Subsidiary": any Subsidiary of the Borrower designated as such in writing by the Borrower to the Administrative Agent that (i) (x) contributed 2.50% or less of Consolidated EBITDA for the Most Recent Four Quarter Period, and (y) had consolidated assets representing 2.50% or less of Consolidated Total Assets as of the end of the most recently ended financial period for which consolidated financial statements of the Borrower are available; and (ii) together with all other Immaterial Subsidiaries designated pursuant to the preceding clause (i), (x) contributed 5.00% or less of Consolidated EBITDA for the Most Recent Four Quarter Period, and (y) had consolidated assets representing 5.00% or less of Consolidated Total Assets as of the end of the Most Recent Four Quarter Period. Any Subsidiary so designated as an Immaterial Subsidiary that fails to meet the foregoing requirements as of the last day of the Most Recent Four Quarter Period shall continue to be deemed an "Immaterial Subsidiary" hereunder until the date that is sixty (60) days following the date on which such annual or quarterly financial statements were required to be delivered pursuant to Subsection 7.1 with respect to such Most Recent Four Quarter Period.

"Incur": issue, assume, enter into any Guarantee of, incur or otherwise become liable for; and the terms "Incurs," "Incurred" and "Incurrence" shall have a correlative meaning; provided that any Indebtedness or Capital Stock of a Person existing at the time such Person becomes a Subsidiary (whether by merger, consolidation, acquisition or otherwise) shall be deemed to be Incurred by such Subsidiary at the time it becomes a Subsidiary. Accrual of interest, the accretion of accreted value, the payment of interest in the form of additional Indebtedness, and the payment of dividends on Capital Stock constituting Indebtedness in the form of additional shares of the same class of Capital Stock, will not be deemed to be an Incurrence of Indebtedness. Any Indebtedness issued at a discount (including Indebtedness on which interest is payable through the issuance of additional Indebtedness) shall be deemed Incurred at the time of original issuance of the Indebtedness at the initial accreted amount thereof.

"Indebtedness": with respect to any Person on any date of determination (without duplication):

(i) the principal of indebtedness of such Person for borrowed money;

(ii) the principal of obligations of such Person evidenced by bonds, debentures, notes or other similar instruments;

(iii) all reimbursement obligations of such Person in respect of letters of credit, bankers' acceptances or other similar instruments (the amount of such obligations being equal at any time to the aggregate then undrawn and unexpired amount of such letters of credit, bankers' acceptances or other instruments plus the aggregate amount of drawings thereunder that have not then been reimbursed);

(iv) all obligations of such Person to pay the deferred and unpaid purchase price of property (except Trade Payables), which purchase price is due more than one year after the date of placing such property in final service or taking final delivery and title thereto;

(v) all Capitalized Lease Obligations of such Person;

(vi) the redemption, repayment or other repurchase amount of such Person with respect to any Disqualified Stock of such Person or (if such Person is a Subsidiary of the Borrower other than a Subsidiary Guarantor) any Preferred Stock of such Subsidiary, but excluding, in each case, any accrued dividends (the amount of such obligation to be equal at any time to the maximum fixed involuntary redemption, repayment or repurchase price for such Capital Stock, or if less (or if such Capital Stock has no such fixed price), to the involuntary redemption, repayment or repurchase price therefor calculated in accordance with the terms thereof as if then redeemed, repaid or repurchased, and if such price is based upon or measured by the fair market value of such Capital Stock, such fair market value shall be as determined in good faith by the Board of Directors or the board of directors or other governing body of the issuer of such Capital Stock);

(vii) all Indebtedness of other Persons secured by a Lien on any asset of such Person, whether or not such Indebtedness is assumed by such Person; provided that the amount of Indebtedness of such Person shall be the lesser of (A) the fair market value of such asset at such date of determination (as determined in good faith by the Borrower) and (B) the amount of such Indebtedness of such other Persons;

(viii) all Guarantees by such Person of Indebtedness of other Persons, to the extent so Guaranteed by such Person;

(ix) to the extent not otherwise included in this definition, net Hedging Obligations of such Person (the amount of any such obligation to be equal at any time to the termination value of such agreement or arrangement giving rise to such Hedging Obligation that would be payable by such Person at such time); and

(x) obligations evidenced by the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements.

The amount of Indebtedness of any Person at any date shall be determined as set forth above or otherwise provided in this Agreement, or otherwise shall equal the amount thereof that would appear as a liability on a balance sheet of such Person (excluding any notes thereto) prepared in accordance with GAAP.

"Indemnified Liabilities": as defined in Subsection 11.5.

"Indemnitee": as defined in Subsection 11.5.

"Individual Lender Exposure": of any Lender, at any time, the sum of the aggregate principal amount of all Term Loans made by such Lender and then outstanding.

"Initial Agreement": as defined in Subsection 8.3(c).

"Initial Term Loan": as defined in Subsection 2.1.

"Initial Term Loan Commitment": as to any Lender, its obligation to make Initial Term Loans to the Borrower pursuant to Subsection 2.1 in an aggregate amount not to exceed at any one time outstanding the amount set forth opposite such Lender's name in Schedule A under the heading "Initial Term Loan Commitment"; collectively, as to all the Lenders, the "Initial Term Loan Commitments". The original aggregate amount of the Initial Term Loan Commitments on the Closing Date is $55,000,000.

"Insolvency": with respect to any Multiemployer Plan, the condition that such Plan is insolvent within the meaning of Section 4245 of ERISA.

"Intellectual Property": as defined in Subsection 5.9.

"Intercompany Subordination Agreement": an intercompany subordination agreement, dated as of the Closing Date, executed and delivered by Borrower, each of its Subsidiaries and the Administrative Agent, the form and substance of which is reasonably satisfactory to Administrative Agent.

"Intercreditor Agreement Supplement": as defined in Subsection 10.8(a).

"Interest Payment Date": (a) as to any ABR Loan, the last Business Day of each March, June, September and December to occur while such Loan is outstanding, and the final maturity date of such Loan, (b) as to any Eurodollar Loan having an Interest Period of three months or less, the last day of such Interest Period, and (c) as to any Eurodollar Loan having an Interest Period longer than three months, (i) each day which is three months, or a whole multiple thereof, after the first day of such Interest Period and (ii) the last day of such Interest Period.

"Interest Period": with respect to any Eurodollar Loan:

(a) initially, the period commencing on the borrowing or conversion date, as the case may be, with respect to such Eurodollar Loan and ending one, two, three or six months (or, if agreed to by each affected Lender, twelve (12) months or a shorter period) thereafter, as selected by the Borrower in its notice of borrowing or notice of conversion, as the case may be, given with respect thereto; and

(b) thereafter, each period commencing on the last day of the next preceding Interest Period applicable to such Eurodollar Loan and ending one, two, three or six months (or if agreed to by each affected Lender, twelve (12) months or a shorter period) thereafter, as selected by the Borrower by irrevocable notice to the Administrative Agent not less than three (3) Business Days prior to the last day of the then current Interest Period with respect thereto; provided that all of the foregoing provisions relating to Interest Periods are subject to the following:

(i) if any Interest Period would otherwise end on a day that is not a Business Day, such Interest Period shall be extended to the next succeeding Business Day unless the result of such extension would be to carry such Interest Period into another calendar month in which event such Interest Period shall end on the immediately preceding Business Day;

(ii) any Interest Period that would otherwise extend beyond the Maturity Date shall (for all purposes other than Subsection 4.12) end on the Maturity Date;

(iii) any Interest Period that begins on the last Business Day of a calendar month (or on a day for which there is no numerically corresponding day in the calendar month at the end of such Interest Period) shall end on the last Business Day of a calendar month; and

(iv) the Borrower shall select Interest Periods so as not to require a scheduled payment of any Eurodollar Loan during an Interest Period for such Eurodollar Loan.

"Interest Rate Agreement": with respect to any Person, any interest rate protection agreement, future agreement, option agreement, swap agreement, cap agreement, collar agreement, hedge agreement or other similar agreement or arrangement (including derivative agreements or arrangements), as to which such Person is party or a beneficiary.

"Inventory": goods held for sale, lease or use by a Person in the ordinary course of business, net of any reserve for goods that have been segregated by such Person to be returned to the applicable vendor for credit, as determined in accordance with GAAP.

"Investment": in any Person by any other Person, any direct or indirect advance, loan or other extension of credit (other than to customers, dealers, licensees, franchisees, suppliers, consultants, directors, officers or employees of any Person in the ordinary course of business) or capital contribution (by means of any transfer of cash or other property to others or any payment for property or services for the account or use of others) to, or any purchase or acquisition of Capital Stock, Indebtedness or other similar instruments issued by, such Person. For purposes of the definition of "Unrestricted Subsidiary" and Subsection 8.2 only, (i) "Investment" shall include the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the Fair Market Value of the net assets of any Subsidiary of the Borrower at the time that such Subsidiary is designated an Unrestricted Subsidiary, provided that upon a redesignation of such Subsidiary as a Restricted Subsidiary, the Borrower shall be deemed to continue to have a permanent "Investment" in an Unrestricted Subsidiary in an amount (if positive) equal to (x) the Borrower's "Investment" in such Subsidiary at the time of such redesignation less (y) the portion (proportionate to the Borrower's equity interest in such Subsidiary) of the Fair Market Value of the net assets of such Subsidiary at the time of such redesignation, and (ii) any property transferred to or from an Unrestricted Subsidiary shall be valued at its fair market value (as determined in good faith by the Borrower) at the time of such transfer. Guarantees shall not be deemed to be Investments. The amount of any Investment outstanding at any time shall be the original cost of such Investment, reduced (at the Borrower's option) by any dividend, distribution, interest payment, return of capital, repayment or other amount or value received in respect of such Investment.

"Investment Company Act": the Investment Company Act of 1940, as amended from time to time.

"Investment Grade Rating": a rating of Baa3 or better by Moody's and BBB- or better by S&P (or, in either case, the equivalent of such rating by such organization), or an equivalent rating by any other Rating Agency.

"Investment Grade Securities": (i) securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof (other than Cash Equivalents); (ii) debt securities or debt instruments with an Investment Grade Rating issued or directly and fully guaranteed or insured by any Governmental Authority; (iii) debt securities or debt instruments with a rating of A3 or better by Moody's and A- or better by S&P (or, in either case, the equivalent of such rating by such organization), or an equivalent rating by any other Rating Agency, but excluding any debt securities or instruments constituting loans or advances among the Borrower and its Subsidiaries; (iv) investments in any fund that invests exclusively in securities issued or directly and fully guaranteed or insured by the United States government or any agency or instrumentality thereof, and/or debt securities or debt instruments with an Investment Grade Rating, which fund may also hold immaterial amounts of cash pending investment or distribution; and (v) corresponding instruments in countries other than the United States customarily utilized for high quality investments but in an aggregate amount not exceeding 10% of the Fair Market Value of all Investment Grade Securities held by the Borrower and its Restricted Subsidiaries.

"Junior Debt": any Subordinated Obligations and Guarantor Subordinated Obligations.

"Junior Lien Intercreditor Agreement: each intercreditor agreement entered into in connection with permitted Junior Debt, in a form and substance reasonably satisfactory to the Borrower and the Agents, as required by the terms hereof, as amended, restated, supplemented, waived or otherwise modified from time to time.

"Lenders": each of the Persons identified as a "Lender" on the signature pages hereto and their successors and permitted assigns.

"Lending Office": with respect to any Lender and for each Type of Loan, the "Lending Office" of such Lender (or of an Affiliate of such Lender) designated for such Type of Loan in such Lender's administrative questionnaire or in any applicable Assignment and Acceptance pursuant to which such Lender became a Lender hereunder or such other office of such Lender (or of an Affiliate of such Lender) as such Lender may from time to time specify to the Administrative Agent and the Borrower as the office by which its Loans of such Type are to be made and maintained.

"LIBOR Rate":

(i) for any Interest Period with respect to a Eurodollar Loan, the rate per annum equal to (A) the ICE Benchmark Administration Limited LIBOR Rate ("ICE LIBOR"), as published by Bloomberg (or such other commercially available source providing quotations of ICE LIBOR as may be designated by the Administrative Agent from time to time) at approximately 11:00 a.m., London time, two (2) London Banking Days prior to the commencement of such Interest Period, for Dollar deposits (for delivery on the first day of such

Interest Period) with a term equivalent to such Interest Period or, (B) if such rate is not available at such time for any reason, the rate per annum determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the first day of such Interest Period in same day funds in the approximate amount of the Eurodollar Loan being made, continued or converted and with a term equivalent to such Interest Period would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank eurodollar market at their request at approximately 11:00 a.m. (London time) two (2) London Banking Days prior to the commencement of such Interest Period; and

(ii) for any interest rate calculation with respect to an ABR Loan, the rate per annum equal to (A) ICE LIBOR, at approximately 11:00 a.m., London time, determined two (2) London Banking Days prior to such date for Dollar deposits being delivered in the London interbank market for a term of one (1) month commencing that day or (B) if such published rate is not available at such time for any reason, the rate determined by the Administrative Agent to be the rate at which deposits in Dollars for delivery on the date of determination in same day funds in the approximate amount of the ABR Loan being made or maintained and with a term equal to one (1) month would be offered by the principal London office of a banking institution selected by the Administrative Agent in the London interbank Eurodollar market at their request at the date and time of determination.

"Lien": any mortgage, pledge, security interest, encumbrance, lien or charge of any kind (including any conditional sale or other title retention agreement or lease in the nature thereof).

"Limited Liability Company Agreement": the Fourth Amended and Restated Limited Liability Company Agreement of Boomerang Tube, LLC dated on or about the date hereof, as in effect on the Closing Date.

"Loan": each Initial Term Loan and Extended Loan; collectively, the "Loans".

"Loan Documents": this Agreement, any Notes, the Control Agreements, the Subordinated Notes Intercreditor Agreement, the Encana Intercreditor Agreement, each Junior Lien Intercreditor Agreement (on and after the execution thereof), each Other Intercreditor Agreement (on and after the execution thereof), the Intercompany Subordination Agreement, the Guarantee and Collateral Agreement and any other Security Documents, each as amended, restated, supplemented, waived or otherwise modified from time to time.

"Loan Parties": the Borrower and the Guarantors; individually, a "Loan Party".

"London Banking Day": any day on which dealings in Dollar deposits are conducted by and between banks in the London interbank eurodollar market.

"Management Advances": (1) loans or advances made to directors, officers, employees or consultants of any Parent Entity, the Borrower or any Restricted Subsidiary (x) in respect of travel, entertainment or moving related expenses incurred in the ordinary course of business, (y) in respect of moving related expenses incurred in connection with any closing or consolidation of any facility, or (z) in the ordinary course of business and (in the case of this clause (z)) not exceeding $1,100,000 in the aggregate outstanding at any time, (2) promissory

notes of Management Investors acquired in connection with the issuance of Management Stock to such Management Investors, (3) Management Guarantees, or (4) other Guarantees of borrowings by Management Investors in connection with the purchase of Management Stock, which Guarantees are permitted under Subsection 8.1.

"Management Guarantees": guarantees (x) of up to an aggregate principal amount outstanding at any time of $1,100,000 of borrowings by Management Investors in connection with their purchase of Management Stock or (y) made on behalf of, or in respect of loans or advances made to, directors, officers, employees or consultants of any Parent Entity, New Holdings, the Borrower or any Restricted Subsidiary (1) in respect of travel, entertainment and moving related expenses incurred in the ordinary course of business, or (2) in the ordinary course of business and (in the case of this clause (2)) not exceeding $1,100,000 in the aggregate outstanding at any time.

"Management Investors": the officers, directors, employees and other members of the management of any Parent Entity, New Holdings, the Borrower or any of their respective Subsidiaries, or family members or relatives of any of the foregoing (provided that, solely for purposes of the definition of "Permitted Holders," such relatives shall include only those Persons who are or become Management Investors in connection with estate planning for or inheritance from other Management Investors, as determined in good faith by the Borrower, which determination shall be conclusive), or trusts, partnerships or limited liability companies for the benefit of any of the foregoing, or any of their heirs, executors, successors and legal representatives, who at any date beneficially own or have the right to acquire, directly or indirectly, Capital Stock of New Holdings, the Borrower, any Restricted Subsidiary or any Parent Entity.

"Management Stock": Capital Stock of New Holdings or any Parent Entity (including any options, warrants or other rights in respect thereof) held by any of the Management Investors.

"Margin Stock": "margin stock" as such term is defined in Regulation U.

"Material Adverse Effect": a material adverse effect on (a) the business, operations, property or condition (financial or otherwise) of the Borrower and its Restricted Subsidiaries taken as a whole or (b) the validity or enforceability as to any Loan Party thereto of this Agreement or any of the other Loan Documents or the rights or remedies of the Agents and the Lenders under the Loan Documents or with respect to the Collateral taken as a whole.

"Material Subsidiaries": Restricted Subsidiaries of the Borrower constituting, individually or in the aggregate (as if such Restricted Subsidiaries constituted a single Subsidiary), a "significant subsidiary" in accordance with Rule 1-02 under Regulation S-X.

"Materials of Environmental Concern": any hazardous or toxic substances or materials or wastes defined, listed, or regulated as such in or under, or which may give rise to liability under, any applicable Environmental Law, including gasoline, petroleum (including crude oil or any fraction thereof), petroleum products or by-products, asbestos, polychlorinated biphenyls and urea-formaldehyde insulation.

"Maturity Date": the earlier of (a) the acceleration of the Term Loans hereunder and (b) [_____, 2020][1].

"Maximum Rate": as defined in Subsection 4.1(e).

"Moody's": Moody's Investors Service, Inc., and its successors.

"Mortgage Policies": as defined in Subsection 6.1(k)(i).

"Mortgaged Fee Properties": the collective reference to each real property owned in fee by the Loan Parties listed on Schedule 5.8 or required to be mortgaged as Collateral pursuant to the requirements of Subsection 7.9, including the land and all buildings, improvements, structures and fixtures now or subsequently located thereon and owned by any such Loan Party.

"Mortgages": each of the mortgages and deeds of trust, or similar security instruments executed and delivered by any Loan Party to the Collateral Agent, substantially in the form of Exhibit C, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Most Recent Four Quarter Period": the four (4) fiscal quarter period of the Borrower ending on the last day of the most recently completed fiscal year or fiscal quarter for which financial statements of the Borrower have been (or have been required to be) delivered under Subsection 7.1(a) or 7.1(b).

"Multiemployer Plan": a Plan which is a multiemployer plan as defined in Section 4001(a)(3) of ERISA.

"Net Available Cash": from an Asset Disposition or Recovery Event, an amount equal to the cash payments received (including any cash payments received by way of deferred payment of principal pursuant to a note or installment receivable or otherwise, but only as and when received, but excluding any other consideration received in the form of assumption by the acquiring Person of Indebtedness or other obligations relating to the properties or assets that are the subject of such Asset Disposition or Recovery Event or received in any other non-cash form) therefrom, in each case net of (i) all legal, title and recording tax expenses, commissions and other fees and expenses incurred, and all Permitted Tax Distributions made or to be made and (without duplication) all Federal, state, provincial, foreign and local taxes required to be paid or to be accrued as a liability under GAAP, as a consequence of such Asset Disposition or Recovery Event (including as a consequence of any transfer of funds in connection with the application thereof in accordance with Subsection 8.4), (ii) all payments made, and all installment payments required to be made, on any Indebtedness (other than Additional Obligations, Term Loans and Refinancing Indebtedness in respect of each of the foregoing) (x) that is secured by any assets subject to such Asset Disposition or involved in such Recovery Event, in accordance with the terms of any Lien upon such assets, or (y) that must by its terms, or in order to obtain a necessary consent to such Asset Disposition, or by applicable law, be

[1] NTD: To be the date that is 5 years following the Plan Effective Date.

repaid out of the proceeds from such Asset Disposition or Recovery Event, including but not limited to any payments required to be made to increase borrowing availability under any revolving credit facility, (iii) all distributions and other payments required to be made to minority interest holders in Subsidiaries or joint ventures as a result of such Asset Disposition or Recovery Event, or to any other Person (other than the Borrower or a Restricted Subsidiary) owning a beneficial interest in the assets disposed of in such Asset Disposition or subject to such Recovery Event, (iv) any liabilities or obligations associated with the assets disposed of in such Asset Disposition or involved in such Recovery Event and retained, indemnified or insured by the Borrower or any Restricted Subsidiary after such Asset Disposition or Recovery Event, including without limitation pension and other post-employment benefit liabilities, liabilities related to environmental matters, and liabilities relating to any indemnification obligations associated with such Asset Disposition or Recovery Event, (v) in the case of an Asset Disposition, the amount of any purchase price or similar adjustment (x) claimed by any Person to be owed by the Borrower or any Restricted Subsidiary, until such time as such claim shall have been settled or otherwise finally resolved, or (y) paid or payable by the Borrower or any Restricted Subsidiary, in either case in respect of such Asset Disposition and (vi) in the case of any Recovery Event, any amount thereof that constitutes or represents reimbursement or compensation for any amount previously paid or to be paid by the Borrower or any of its Subsidiaries.

"Net Cash Proceeds": with respect to any issuance or sale of any securities of the Borrower or any Subsidiary by the Borrower or any Subsidiary, or any capital contribution, or any Incurrence of Indebtedness, the cash proceeds of such issuance, sale, contribution or Incurrence net of attorneys' fees, accountants' fees, underwriters' or placement agents' fees, discounts or commissions and brokerage, consultant and other fees actually incurred in connection with such issuance, sale, contribution or Incurrence and net of taxes paid or payable as a result thereof.

"New Holdings": Boomerang Tube Holdings, Inc., a Delaware corporation.

"New York Courts": as defined in Subsection 11.13(a).

"New York Supreme Court": as defined in Subsection 11.13(a).

"Non-Defaulting Lender": at any time, each Lender that is not a Defaulting Lender at such time.

"Non-Excluded Taxes": all Taxes other than Excluded Taxes.

"Non-Extending Lender": as defined in Subsection 2.8(e).

"Non-Wholly Owned Subsidiary": each Subsidiary that is not a Wholly Owned Subsidiary.

"Notes": as defined in Subsection 2.2(a).

"Obligations": with respect to any Indebtedness, any principal, premium (if any), interest (including interest accruing on or after the filing of any petition in bankruptcy or for

reorganization relating to the Borrower or any Restricted Subsidiary whether or not a claim for post-filing interest is allowed in such proceedings), fees, charges, expenses, reimbursement obligations, Guarantees of such Indebtedness (or of Obligations in respect thereof), other monetary obligations of any nature and all other amounts payable thereunder or in respect thereof.

"Obligor": any purchaser of goods or services or other Person obligated to make payment to the Borrower or any of its Restricted Subsidiaries (other than any Restricted Subsidiary that is not a Loan Party) in respect of a purchase of such goods or services.

"Organizational Documents": with respect to any Person, (a) the articles of incorporation, certificate of incorporation or certificate of formation (or the equivalent organizational documents) of such Person and (b) the bylaws or operating agreement (or the equivalent governing documents) of such Person.

"Other Intercreditor Agreement": each intercreditor agreement entered into in connection with permitted secured Additional Indebtedness in a form and substance reasonably agreed by the Borrower and the Agents, as required by the terms hereof, as amended, supplemented, waived or otherwise modified from time to time.

"Outstanding Amount": with respect to the Loans on any date, the principal amount thereof after giving effect to any borrowings and prepayments or repayments thereof occurring on such date.

"Parent Entity": New Holdings and any Other Parent, and any other Person that is a Subsidiary of New Holdings or any Other Parent and of which the Borrower is a Subsidiary. As used herein, "Other Parent" means a Person of which the Borrower becomes a Subsidiary after the Closing Date, provided that either (x) immediately after the Borrower first becomes a Subsidiary of such Person, more than 50.0% of the Voting Stock of such Person shall be held by one or more Persons that held more than 50.0% of the Voting Stock of the Borrower or a Parent Entity of the Borrower immediately prior to the Borrower first becoming such Subsidiary or (y) such Person shall be deemed not to be an Other Parent for the purpose of determining whether a Change of Control shall have occurred by reason of the Borrower first becoming a Subsidiary of such Person.

"Parent Expenses": (i) costs (including all professional fees and expenses) incurred by any Parent Entity in connection with maintaining its existence or in connection with its reporting obligations under, or in connection with compliance with, applicable laws or applicable rules of any governmental, regulatory or self-regulatory body or stock exchange, this Agreement or any other agreement or instrument relating to Indebtedness of the Borrower or any Restricted Subsidiary, including in respect of any reports filed with respect to the Securities Act, the Exchange Act or the respective rules and regulations promulgated thereunder, (ii) expenses incurred by any Parent Entity in connection with the acquisition, development, maintenance, ownership, prosecution, protection and defense of its intellectual property and associated rights (including but not limited to trademarks, service marks, trade names, trade dress, patents, copyrights and similar rights, including registrations and registration or renewal applications in respect thereof; inventions, processes, designs, formulae, trade secrets, know-how, confidential

information, computer software, data and documentation, and any other intellectual property rights; and licenses of any of the foregoing) to the extent such intellectual property and associated rights relate to the business or businesses of the Borrower or any Subsidiary thereof, (iii) indemnification obligations of any Parent Entity owing to directors, officers, employees or other Persons under its charter or by-laws or pursuant to written agreements with or for the benefit of any such Person, or obligations in respect of director and officer insurance (including premiums therefor), (iv) other administrative and operational expenses of any Parent Entity incurred in the ordinary course of business, and (v) fees and expenses incurred by any Parent Entity in connection with any offering of Capital Stock or Indebtedness, (w) which offering is not completed, or (x) where the net proceeds of such offering are intended to be received by or contributed or loaned to the Borrower or a Restricted Subsidiary, or (y) in a prorated amount of such expenses in proportion to the amount of such net proceeds intended to be so received, contributed or loaned, or (z) otherwise on an interim basis prior to completion of such offering so long as any Parent Entity shall cause the amount of such expenses to be repaid to the Borrower or the relevant Restricted Subsidiary out of the proceeds of such offering promptly if completed.

"Participant": as defined in Subsection 11.6(c)(i).

"Participant Register": as defined in Subsection 11.6(b)(vi).

"Patriot Act": as defined in Subsection 11.18.

"PBGC": the Pension Benefit Guaranty Corporation established pursuant to Subtitle A of Title IV of ERISA (or any successor thereto).

"Permitted Encumbrances": (i) those liens, encumbrances and other matters affecting title to any Mortgaged Fee Property listed in the Mortgage Policies in respect thereof and found, on the date of delivery of such Mortgage Policies to the Collateral Agent in accordance with the terms hereof, reasonably acceptable by the Collateral Agent, (ii) zoning, building codes, land use and other similar laws and municipal ordinances which are not violated in any material respect by the existing improvements and the present use by the mortgagor of the Premises (as defined in the respective Mortgage) and (iii) such other items to which the Collateral Agent may consent (such consent not to be unreasonably withheld).

"Permitted Holders": (i) holders of the Capital Stock of New Holdings on the Closing Date and their respective Affiliates and Controlled Investment Affiliates and (ii) the Management Investors and their respective Affiliates.

"Permitted Investment": an Investment by the Borrower or any Restricted Subsidiary in, or consisting of, any of the following:

(i) subject to the terms of the Intercompany Subordination Agreement, a Restricted Subsidiary, the Borrower, or a Person that will, upon the making of such Investment, become a Restricted Subsidiary (and any Investment held by such Person that was not acquired by such Person in contemplation of so becoming a Restricted Subsidiary); provided that any Investment in a Restricted Subsidiary which is not a Subsidiary Guarantor shall not exceed an amount equal to 11.0% of Consolidated Total Assets at any time;

(ii) another Person if as a result of such Investment such other Person is merged or consolidated with or into, or transfers or conveys all or substantially all its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary (and, in each case, any Investment held by such other Person that was not acquired by such Person in contemplation of such merger, consolidation or transfer);

(iii) Temporary Cash Investments, Investment Grade Securities or Cash Equivalents;

(iv) receivables owing to the Borrower or any Restricted Subsidiary, if created or acquired in the ordinary course of business;

(v) any securities or other Investments received as consideration in, or retained in connection with, sales or other dispositions of property or assets, including Asset Dispositions made in compliance with Subsection 8.4;

(vi) securities or other Investments received in settlement of debts created in the ordinary course of business and owing to, or of other claims asserted by, the Borrower or any Restricted Subsidiary, or as a result of foreclosure, perfection or enforcement of any Lien, or in satisfaction of judgments, including in connection with any bankruptcy proceeding or other reorganization of another Person;

(vii) Investments in existence or made pursuant to legally binding written commitments in existence on the Closing Date and set forth on Schedule 1.1(c);

(viii) Currency Agreements, Interest Rate Agreements, Commodities Agreements and related Hedging Obligations, which obligations are Incurred in compliance with Subsection 8.1;

(ix) pledges or deposits (x) with respect to leases or utilities provided to third parties in the ordinary course of business or (y) otherwise described in the definition of "Permitted Liens" or made in connection with Liens permitted under Subsection 8.6;

(x) any promissory note issued by the Borrower, or any Parent Entity;

(xi) bonds secured by assets leased to and operated by the Borrower or any Restricted Subsidiary that were issued in connection with the financing of such assets so long as the Borrower or any Restricted Subsidiary may obtain title to such assets at any time by paying a nominal fee, canceling such bonds and terminating the transaction;

(xii) an Investment in New Holdings of the type referred to in Subsection 8.2(a)(v)(x) herein;

(xiii) any Investment to the extent made using Capital Stock of New Holdings (other than Disqualified Stock), or Capital Stock of any Parent Entity, as consideration;

(xiv) Management Advances;

(xv) Investments in Related Businesses in an aggregate amount outstanding at any time not to exceed $11,000,000;

(xvi) any transaction to the extent it constitutes an Investment that is permitted by and made in accordance with the provisions of Subsection 8.5(b) (except transactions described in clauses (i), (ii)(4), (iii), (v), (vi) and (ix) therein), including any Investment pursuant to any transaction described in Subsection 8.5(b)(ii) (whether or not any Person party thereto is at any time an Affiliate of the Borrower);

(xvii) any Investment by any Captive Insurance Subsidiary in connection with the provision of insurance to the Borrower or any of its Subsidiaries, which Investment is made in the ordinary course of business of such Captive Insurance Subsidiary, or by reason of applicable law, rule, regulation or order, or that is required or approved by any regulatory authority having jurisdiction over such Captive Insurance Subsidiary or its business, as applicable; and

(xviii) other Investments in an aggregate amount outstanding at any time not to exceed an amount equal to the greater of $11,000,000 and 5.5% of Consolidated Total Assets.

If any Investment pursuant to clause (xv) or (xviii) above, or Subsection 8.2(b)(vi), as applicable, is made in any Person that is not a Restricted Subsidiary and such Person thereafter (A) becomes a Restricted Subsidiary or (B) is merged or consolidated into, or transfers or conveys all or substantially all of its assets to, or is liquidated into, the Borrower or a Restricted Subsidiary, then such Investment shall thereafter be deemed to have been made pursuant to clause (i) or (ii) above, respectively, and not clause (xv) or (xviii) above, or Subsection 8.2(b)(vi), as applicable.

"Permitted Liens":

(a) Liens for taxes, assessments or other governmental charges not yet delinquent or the nonpayment of which in the aggregate would not reasonably be expected to have a material adverse effect on the Borrower and its Restricted Subsidiaries or that are being contested in good faith and by appropriate proceedings if adequate reserves with respect thereto are maintained on the books of the Borrower or a Subsidiary thereof, as the case may be, in accordance with GAAP;

(b) Liens with respect to outstanding motor vehicle fines and carriers', warehousemen's, mechanics', landlords', materialmen's, repairmen's or other like Liens arising in the ordinary course of business in respect of obligations that are not overdue for a period of more than sixty (60) days or that are bonded or that are being contested in good faith and by appropriate proceedings;

(c) pledges, deposits or Liens in connection with workers' compensation, professional liability insurance, insurance programs, unemployment insurance and other social security and other similar legislation or other insurance related obligations (including, without limitation, pledges or deposits securing liability to insurance carriers under insurance or self-insurance arrangements);

(d) pledges, deposits or Liens to secure the performance of bids, tenders, trade, government or other contracts (other than for borrowed money), obligations for utilities, leases, licenses, statutory obligations, completion guarantees, surety, judgment, appeal or performance bonds, other similar bonds, instruments or obligations, and other obligations of a like nature incurred in the ordinary course of business;

(e) (i) easements (including reciprocal easement agreements), rights-of-way, building, zoning and similar restrictions, utility agreements, covenants, reservations, restrictions, encroachments, charges, and other similar encumbrances or title defects incurred, or leases or subleases granted to others, in the ordinary course of business, that do not in the aggregate materially interfere with the ordinary conduct of the business of the Borrower and its Subsidiaries, taken as a whole and (ii) Permitted Encumbrances;

(f) Liens existing on, or provided for under written arrangements existing on, the Closing Date and set forth on Schedule 1.1(d), or (in the case of any such Liens securing Indebtedness of the Borrower or any of its Subsidiaries existing or arising under written arrangements existing on the Closing Date) securing any Refinancing Indebtedness in respect of such Indebtedness, so long as the Lien securing such Refinancing Indebtedness is limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or under such written arrangements could secure) the original Indebtedness;

(g) (i) mortgages, liens, security interests, restrictions, encumbrances or any other matters of record that have been placed by any developer, landlord or other third party on property over which the Borrower or any Restricted Subsidiary of the Borrower has easement rights or on any leased property and subordination or similar agreements relating thereto and (ii) any condemnation or eminent domain proceedings affecting any real property;

(h) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) consisting of Hedging Obligations, Bank Products Obligations (but only to the extent secured by Collateral), Purchase Money Obligations or Capitalized Lease Obligations Incurred in compliance with Subsection 8.1; provided that Liens securing Hedging Obligations that do not constitute Secured Hedging Obligations shall not exceed $11,000,000;

(i) Liens arising out of judgments, decrees, orders or awards in respect of which the Borrower or any Restricted Subsidiary shall in good faith be prosecuting an appeal or proceedings for review, which appeal or proceedings shall not have been finally terminated, or if the period within which such appeal or proceedings may be initiated shall not have expired;

(j) leases, subleases, licenses or sublicenses to or from third parties;

(k) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) consisting of (1) Indebtedness Incurred in compliance with Subsection 8.1(b)(i) pursuant to (a) this Agreement and the other Loan Documents, (b) the ABL Facility, (c) Senior Term Debt and (d) any Additional Obligations (and any Refinancing Indebtedness in respect thereof), provided, that any Liens on Collateral pursuant to this clause (k)(1) shall be subject to the Subordinated Notes Intercreditor Agreement, a Junior Lien Intercreditor Agreement or an

Other Intercreditor Agreement, (2) Indebtedness Incurred in compliance with clauses (b)(iv), (b)(v), (b)(vii), (b)(viii), or clauses (b)(iii)(A) and (B) of Subsection 8.1 (other than Refinancing Indebtedness Incurred in respect of Indebtedness described in Subsection 8.1(a)), (3) any Indebtedness Incurred in compliance with Subsection 8.1(b)(xiii), provided that any Liens securing such Indebtedness shall rank junior to the Liens securing the Term Loan Facility Obligations and shall be subject to a Junior Lien Intercreditor Agreement or an Other Intercreditor Agreement, (4) (A) Acquisition Indebtedness Incurred in compliance with Subsection 8.1(b)(x) or (xi), provided that (x) such Liens are limited to all or part of the same property or assets, including Capital Stock (plus improvements, accessions, proceeds or dividends or distributions in respect thereof, or replacements of any thereof) acquired, or of any Person acquired or merged or consolidated with or into the Borrower or any Restricted Subsidiary, in any transaction to which such Acquisition Indebtedness relates or (y) on the date of the Incurrence of such Indebtedness after giving effect to such Incurrence, the Consolidated Secured Leverage Ratio would equal or be less than the Consolidated Secured Leverage Ratio immediately prior to giving effect thereto or (B) any Refinancing Indebtedness Incurred in respect thereof or (5) Indebtedness of any Restricted Subsidiary that is not a Subsidiary Guarantor (limited, in the case of this clause (k)(5), to Liens on any of the property and assets of any Restricted Subsidiary that is not a Subsidiary Guarantor; in each case under the foregoing clauses (1) through (5) including Liens securing any Guarantee of any thereof;

(l) Liens existing on property or assets of a Person at the time such Person becomes a Subsidiary of the Borrower (or at the time the Borrower or a Restricted Subsidiary acquires such property or assets, including any acquisition by means of a merger or consolidation with or into the Borrower or any Restricted Subsidiary); provided, however, that such Liens are not created in connection with, or in contemplation of, such other Person becoming such a Subsidiary (or such acquisition of such property or assets), and that such Liens are limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which such Liens arose, would be required to secure) the obligations to which such Liens relate; provided, further, that for purposes of this clause (l), if a Person other than the Borrower is the Successor Borrower with respect thereto, any Subsidiary thereof shall be deemed to become a Subsidiary of the Borrower, and any property or assets of such Person or any such Subsidiary shall be deemed acquired by the Borrower or a Restricted Subsidiary, as the case may be, when such Person becomes such Successor Borrower;

(m) Liens on Capital Stock, Indebtedness or other securities of an Unrestricted Subsidiary that secure Indebtedness or other obligations of such Unrestricted Subsidiary;

(n) any encumbrance or restriction (including, but not limited to, pursuant to put and call agreements or buy/sell arrangements) with respect to Capital Stock of any joint venture or similar arrangement pursuant to any joint venture or similar agreement;

(o) Liens securing Indebtedness (including Liens securing any Obligations in respect thereof) consisting of Refinancing Indebtedness (other than any Indebtedness described in clause (k)(1) above of this definition) Incurred in respect of any Indebtedness secured by, or securing any refinancing, refunding, extension, renewal or replacement (in whole or in part) of any other obligation secured by, any other Permitted Liens, provided that any such new Lien is

limited to all or part of the same property or assets (plus improvements, accessions, proceeds or dividends or distributions in respect thereof) that secured (or, under the written arrangements under which the original Lien arose, would be required to secure) the obligations to which such Liens relate;

(p) Liens (1) arising by operation of law (or by agreement to the same effect) in the ordinary course of business, (2) on property or assets under construction (and related rights) in favor of a contractor or developer or arising from progress or partial payments by a third party relating to such property or assets, (3) [reserved], (4) on cash set aside at the time of the Incurrence of any Indebtedness or government securities purchased with such cash, in either case to the extent that such cash or government securities prefund the payment of interest on such Indebtedness and are held in an escrow account or similar arrangement to be applied for such purpose, (5) securing or arising by reason of any netting or set-off arrangement entered into in the ordinary course of banking or other trading activities (including in connection with purchase orders and other agreements with customers), (6) in favor of the Borrower or any Subsidiary (other than Liens on property or assets of the Borrower or any Subsidiary Guarantor in favor of any Subsidiary that is not a Subsidiary Guarantor), (7) arising out of conditional sale, title retention, consignment or similar arrangements for the sale of goods entered into in the ordinary course of business, (8) on inventory or other goods and proceeds securing obligations in respect of bankers' acceptances issued or created to facilitate the purchase, shipment or storage of such inventory or other goods, (9) relating to pooled deposit or sweep accounts to permit satisfaction of overdraft, cash pooling or similar obligations incurred in the ordinary course of business; or (10) attaching to commodity trading or other brokerage accounts incurred in the ordinary course of business;

(q) other Liens securing obligations that do not exceed an amount equal to the greater of $11,000,000 and 5.5% of Consolidated Total Assets at any time outstanding;

(r) Liens securing Indebtedness incurred under Subsection 8.1(b)(v)(y);

(s) Liens on Inventory and Accounts in favor of Encana, but only so long as Encana has executed and delivered to the Agents the Encana Intercreditor Agreement subordinating its Liens on the Inventory and Accounts to Collateral Agent's Liens; and

(t) Liens on the SBI Heat Treat Line Collateral (as defined in the Plan of Reorganization) (i) to be retained by the SBI Lender (as defined in the Plan of Reorganization), in the event its secured claim is reinstated, or (ii) to secure the SBI Secured Notes in favor of any holder of an SBI Secured Note (as defined in the Plan of Reorganization).

For purposes of determining compliance with this definition, (x) a Lien need not be incurred solely by reference to one category of Permitted Liens described in this definition but may be incurred under any combination of such categories (including in part under one such category and in part under any other such category) and (y) in the event that a Lien (or any portion thereof) meets the criteria of one or more of such categories of Permitted Liens, the Borrower shall, in its sole discretion, classify or reclassify such Lien (or any portion thereof) in any manner that complies with this definition.

"Permitted Payment": as defined in Subsection 8.2(b).

"Permitted Tax Distribution": tax distributions by the Borrower to direct members of the Borrower at such times and in such amounts that are pursuant to and in accordance with Section 5.3 of the Limited Liability Company Agreement, taking into account any amendment, supplement or replacement of the Limited Liability Company Agreement occurring after the Closing Date with the consent of the Administrative Agent.

"Person": an individual, partnership, corporation, limited liability company, business trust, joint stock company, trust, unincorporated association, joint venture, Governmental Authority or other entity of whatever nature.

"PIK Interest": as defined in Subsection 4.1(a).

"Plan": at a particular time, any employee benefit plan which is covered by ERISA and in respect of which the Borrower or a Commonly Controlled Entity is an "employer" as defined in Section 3(5) of ERISA.

"Plan Effective Date": the "Effective Date" as defined in the Plan of Reorganization.

"Plan of Reorganization": as defined in the recitals to this Agreement.

"Platform": as defined in Subsection 7.2.

"Preferred Stock": as applied to the Capital Stock of any corporation, Capital Stock of any class or classes (however designated) that by its terms is preferred as to the payment of dividends, or as to the distribution of assets upon any voluntary or involuntary liquidation or dissolution of such corporation, over shares of Capital Stock of any other class of such corporation.

"Prepayment Date": as defined in Subsection 4.4(e).

"Public Lender": as defined in Subsection 7.2.

"Purchase": as defined in clause (4) of the definition of "Consolidated Coverage Ratio".

"Purchase Money Obligations": any Indebtedness Incurred to finance or refinance the acquisition, leasing, construction or improvement of property (real or personal) or assets, and whether acquired through the direct acquisition of such property or assets or the acquisition of the Capital Stock of any Person owning such property or assets, or otherwise.

"Rating Agency": Moody's or S&P or, if Moody's or S&P or both shall not make a rating on the Term Loans publicly available, a nationally recognized statistical rating agency or agencies, as the case may be, selected by the Borrower which shall be substituted for Moody's or S&P or both, as the case may be.

"Receivable": a right to receive payment pursuant to an arrangement with another Person pursuant to which such other Person is obligated to pay, as determined in accordance with GAAP.

"Recipient": 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.

"Recovery Event": any settlement of or payment in respect of any property or casualty insurance claim or any condemnation proceeding relating to any asset of any Loan Party giving rise to Net Available Cash to such Loan Party, as the case may be, in excess of $500,000 per year to the extent that such settlement or payment does not constitute reimbursement or compensation for amounts previously paid by the Borrower or any other Loan Party in respect of such casualty or condemnation.

"refinance": refinance, refund, replace, renew, repay, modify, restate, defer, substitute, supplement, reissue, resell or extend (including pursuant to any defeasance or discharge mechanism); and the terms "refinances," "refinanced" and "refinancing" as used for any purpose in this Agreement shall have a correlative meaning.

"Refinancing Agreement": as defined in Subsection 8.3(c).

"Refinancing Indebtedness": Indebtedness that is Incurred to refinance Indebtedness Incurred pursuant to this Agreement and the Loan Documents, the ABL Facility, the Senior Term Facility and any Indebtedness existing on the Closing Date and set forth on Schedule 8.1 or Incurred in compliance with this Agreement (including Indebtedness of the Borrower that refinances Indebtedness of any Restricted Subsidiary (to the extent permitted in this Agreement) and Indebtedness of any Restricted Subsidiary that refinances Indebtedness of another Restricted Subsidiary) including Indebtedness that refinances Refinancing Indebtedness; provided that (1) the Refinancing Indebtedness (x) has a final Stated Maturity at the time such Refinancing Indebtedness is Incurred that is equal to or greater than the final Stated Maturity of the Indebtedness being refinanced (or, if shorter, the Maturity Date of any Loans), (y) has a weighted average life to maturity at the time such Refinancing Indebtedness is Incurred that is equal to or longer than the weighted average life to maturity of the Indebtedness being refinanced (or, if shorter, the weighted average life to maturity of any Loans) and (z) is subordinated in right of payment to the Term Loan Facility Obligations to the same extent as the Indebtedness being refinanced, (2) such Refinancing Indebtedness is Incurred in an aggregate principal amount (or if issued with original issue discount, an aggregate issue price) that is equal to or less than the sum of (x) the aggregate principal amount (or if issued with original issue discount, the aggregate accreted value) then outstanding of the Indebtedness being refinanced, plus (y) fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such Refinancing Indebtedness, (3) Refinancing Indebtedness shall not include (x) Indebtedness of a Restricted Subsidiary that is not a Subsidiary Guarantor that refinances Indebtedness of the Borrower or a Subsidiary Guarantor that could not have been initially Incurred by such Restricted Subsidiary pursuant to Subsection 8.1 or (y) Indebtedness of the Borrower or a Restricted Subsidiary that refinances Indebtedness of an Unrestricted Subsidiary, and (4) if the Indebtedness being refinanced constitutes Additional Obligations (or Refinancing Indebtedness in respect of the foregoing Indebtedness), (w) the Refinancing Indebtedness

complies with the requirements of the definition of "Additional Obligations", (x) if the Indebtedness being refinanced is unsecured, the Refinancing Indebtedness is unsecured, (y) if the Indebtedness being refinanced is secured by a Lien ranking junior to the Liens securing the Term Loan Facility Obligations, the Refinancing Indebtedness is unsecured or secured by a Lien ranking junior to the Liens securing the Term Loan Facility Obligations and (z) if the Indebtedness being refinanced constitutes Term Loan Facility Obligations of the type described above in this clause (4), the Refinancing Indebtedness is incurred pursuant to (and evidenced by) Additional Obligations Documents (and not this Agreement and the other Loan Documents).

"Refunding Capital Stock": as defined in Subsection 8.2(b)(i).

"Register": as defined in Subsection 11.6(b)(v).

"Regulation S-X": Regulation S-X promulgated by the United States Securities and Exchange Commission, as in effect on the Closing Date.

"Regulation T": Regulation T of the Board as in effect from time to time.

"Regulation U": Regulation U of the Board as in effect from time to time.

"Regulation X": Regulation X of the Board as in effect from time to time.

"Reinvestment Period": as defined in Subsection 8.4(b)(i).

"Related Business": those businesses in which the Borrower or any of its Subsidiaries is engaged on the Closing Date, or that are similar, related, complementary, incidental or ancillary thereto or extensions, developments or expansions thereof.

"Related Parties": with respect to any Person, such Person's Affiliates and the partners, officers, directors, trustees, employees, employees, shareholders, members, attorneys and other advisors, agents, representatives and controlling persons of such Person and of such Person's Affiliates and "Related Party" shall mean any of them.

"Related Taxes": any taxes, charges or assessments, including but not limited to sales, use, transfer, rental, ad valorem, value added, stamp, property, consumption, franchise, license, capital, net worth, gross receipts, excise, occupancy, intangibles or similar taxes, charges or assessments (other than federal, state or local taxes measured by income and federal, state or local withholding imposed by any government or other taxing authority on payments made by any Parent Entity other than to another Parent Entity), required to be paid by any Parent Entity by virtue of its being incorporated or having Capital Stock outstanding (but not by virtue of owning stock or other equity interests of any corporation or other entity other than the Borrower, any of its Subsidiaries or any Parent Entity), or being a holding company parent of the Borrower, any of its Subsidiaries or any Parent Entity or receiving dividends from or other distributions in respect of the Capital Stock of the Borrower, any of its Subsidiaries or any Parent Entity, or having guaranteed any obligations of the Borrower or any Subsidiary thereof, or having made any payment in respect of any of the items for which the Borrower or any of its Subsidiaries is permitted to make payments to any Parent Entity pursuant to Subsection 8.2, or acquiring, developing, maintaining, owning, prosecuting, protecting or defending its intellectual property

and associated rights (including but not limited to receiving or paying royalties for the use thereof) relating to the business or businesses of the Borrower or any Subsidiary thereof.

"Reorganization": with respect to any Multiemployer Plan, the condition that such plan is in reorganization within the meaning of Section 4241 of ERISA.

"Reorganization Documents" means (a) the Plan of Reorganization, (b) a certificate issued by an officer of the Borrower regarding assumption of the Material Contracts (as defined in the ABL Credit Agreement), transaction costs, and cure claims, (c) a certified copy of the docket showing entry of the Confirmation Order and showing that no appeals or motions to modify were filed within fourteen days of the date on which the Confirmation Order was entered into the docket and (d) a filing of notice of occurrence of Plan Effective Date and such other documents relating to the Bankruptcy Case as the Administrative Agent may reasonably require.

"Reportable Event": any of the events set forth in Section 4043(c) of ERISA, other than those events as to which the 30 day notice period is waived under Section 21, 22, 23, 24, 25, 27 or 28 of PBGC Regulation Section 4043 or any successor regulation thereto.

"Required Lenders": Lenders, the sum of whose outstanding Individual Lender Exposures represents more than 50% of the sum of the Individual Lender Exposures at such time. The Individual Lender Exposure of any Defaulting Lender shall be disregarded in determining Required Lenders at any time.

"Requirement of Law": as to any Person, the Organizational Documents of such Person, and any law, statute, ordinance, code, decree, treaty, rule or regulation or determination of an arbitrator or a court or other Governmental Authority, in each case applicable to or binding upon such Person or any of its material property or to which such Person or any of its material property is subject, including laws, ordinances and regulations pertaining to zoning, occupancy and subdivision of real properties; provided that the foregoing shall not apply to any non-binding recommendation of any Governmental Authority.

"Responsible Officer": as to any Person, any of the following officers of such Person: (a) the chief executive officer or the president of such Person and, with respect to financial matters, the chief financial officer, the treasurer or the controller of such Person, (b) any vice president of such Person or, with respect to financial matters, any assistant treasurer or assistant controller of such Person, in each case who has been designated in writing to the Administrative Agent or the Collateral Agent as a Responsible Officer by such chief executive officer or president of such Person or, with respect to financial matters, by such chief financial officer of such Person, (c) with respect to Subsection 7.7 and without limiting the foregoing, the general counsel of such Person and (d) with respect to ERISA matters, the senior vice president–human resources (or substantial equivalent) of such Person.

"Restricted Payment": as defined in Subsection 8.2(a).

"Restricted Payment Transaction": any Restricted Payment permitted pursuant to Subsection 8.2, any Permitted Payment, any Permitted Investment, or any transaction specifically excluded from the definition of the term "Restricted Payment" (including pursuant to

the exception contained in clause (i) of such definition and the parenthetical exclusions contained in clauses (ii) and (iii) of such definition).

"Restricted Subsidiary": any Subsidiary of the Borrower other than an Unrestricted Subsidiary.

"S&P": Standard & Poor's Ratings Group, a division of The McGraw-Hill Companies, Inc., and its successors.

"Sale": as defined in clause (3) of the definition of "Consolidated Coverage Ratio".

"Sanctioned Country": at any time, a country, region or territory that is, or whose government is, the subject or target of any Sanctions.

"Sanctioned Person": at any time, (a) any Person listed in any Sanctions-related list of designated Persons maintained by OFAC, the U.S. Department of State, the United Nations Security Council, the European Union or any EU member state, (b) any Person located, organized or resident in a Sanctioned Country or (c) any Person controlled by any such Person.

"Sanctions": economic or financial sanctions or trade embargoes administered or enforced from time to time by (a) the U.S. government, including those administered by OFAC or the U.S. Department of State or (b) the United Nations Security Council, the European Union or Her Majesty's Treasury of the United Kingdom.

"SEC": the Securities and Exchange Commission.

"Secured Hedging Obligations": Hedging Obligations provided by any Person that is a Lender, an Affiliate of a Lender or a lender or Affiliate of a lender under the ABL Facility.

"Secured Parties": the "Secured Parties" as defined in the Guarantee and Collateral Agreement.

"Securities Act": the Securities Act of 1933, as amended from time to time.

"Security Documents": the collective reference to each Mortgage related to any Mortgaged Fee Property, the Guarantee and Collateral Agreement and all other similar security documents hereafter delivered to the Collateral Agent granting or perfecting a Lien on any asset or assets of any Person to secure the obligations and liabilities of the Loan Parties hereunder and/or under any of the other Loan Documents or to secure any guarantee of any such obligations and liabilities, including any security documents executed and delivered or caused to be delivered to the Collateral Agent pursuant to Subsection 7.9(a), 7.9(b), 7.9(c) or 7.9(d), in each case, as amended, restated, supplemented, waived or otherwise modified from time to time.

"Senior Term Agent": Cortland Capital Market Services LLC, as administrative agent and collateral agent for the lenders under the Senior Term Debt Credit Agreement.

"Senior Term Debt": the Indebtedness under the Senior Term Debt Documents.

"Senior Term Debt Credit Agreement" means that certain Credit Agreement dated as of the Closing Date among Borrower, Senior Term Agent and the lenders party thereto, as amended, restated, replaced or otherwise modified from time to time to the extent not prohibited by the Subordinated Notes Intercreditor Agreement.

"Senior Term Debt Documents": (i) the "Loan Documents" and the "Security Documents", in each case as defined in the Senior Term Debt Credit Agreement and (ii) each other document securing or evidencing the Senior Term Debt, in each case as amended, restated, replaced or otherwise modified from time to time to the extent not prohibited by the Subordinated Notes Intercreditor Agreement or the ABL/Term Intercreditor Agreement.

"Senior Term Facility": the collective reference to the Senior Term Debt Credit Agreement, any Senior Term Debt Document, any notes and letters of credit issued pursuant thereto and any guarantee and collateral agreement, patent and trademark security agreement, mortgages, letter of credit applications and other guarantees, pledge agreements, security agreements and collateral documents, and other instruments and documents, executed and delivered pursuant to or in connection with any of the foregoing, in each case as the same may be amended, restated, supplemented, waived or otherwise modified from time to time, or refunded, refinanced, restructured, replaced, renewed, repaid, increased or extended from time to time (whether in whole or in part, whether with the original agents and lenders or other agents and lenders or otherwise, and whether provided under the original Senior Term Debt Credit Agreement or one or more other credit agreements, indentures or financing agreements or otherwise, unless such agreement, instrument or document expressly provides that it is not intended to be and is not a Senior Term Facility), in each case to the extent not prohibited by Section 8.8(b) or the terms of the Subordinated Notes Intercreditor Agreement. Without limiting the generality of the foregoing, the term "Senior Term Facility" shall include any agreement (i) changing the maturity of any Indebtedness Incurred thereunder or contemplated thereby, (ii) adding Subsidiaries of the Borrower as additional borrowers or guarantors thereunder, (iii) increasing the amount of Indebtedness Incurred thereunder or available to be borrowed thereunder or (iv) otherwise altering the terms and conditions thereof, in each case to the extent not prohibited by Section 8.8(b) or the terms of the Senior Notes Intercreditor Agreement.

"Set": the collective reference to Eurodollar Loans of a single Tranche, the then current Interest Periods with respect to all of which begin on the same date and end on the same later date (whether or not such Eurodollar Loans shall originally have been made on the same day).

"Settlement Service": as defined in Subsection 11.6(b).

"Single Employer Plan": any Plan which is covered by Title IV or Section 302 of ERISA or Section 412 of the Code, but which is not a Multiemployer Plan.

"Solvent" and "Solvency": with respect to the Borrower and its Subsidiaries on a consolidated basis after giving effect to the Transactions on the Closing Date, means (i) the Fair Value and Present Fair Salable Value of the assets of the Borrower and its Subsidiaries taken as a

whole exceed their Stated Liabilities and Identified Contingent Liabilities; (ii) the Borrower and its Subsidiaries taken as a whole do not have Unreasonably Small Capital; and (iii) the Borrower and its Subsidiaries taken as a whole will be able to pay their Stated Liabilities and Identified Contingent Liabilities as they mature (all capitalized terms used in this definition other than "Borrower" and "Subsidiary" shall have the meaning assigned to such terms in the form of solvency certificate attached hereto as Exhibit H).

"Specified Existing Term Tranche": as defined in Subsection 2.8(a).

"Stated Maturity": with respect to any Indebtedness, the date specified in such Indebtedness as the fixed date on which the payment of principal of such Indebtedness is due and payable, including pursuant to any mandatory redemption provision (but excluding any provision providing for the repurchase or repayment of such Indebtedness at the option of the holder thereof upon the happening of any contingency).

"Subordinated Obligations": any Indebtedness of the Borrower (whether outstanding on the Closing Date or thereafter Incurred) that is expressly subordinated in right of payment to the Term Loan Facility Obligations pursuant to a written agreement.

"Subordinated Notes Intercreditor Agreement": that certain Subordination and Intercreditor Agreement dated as of the Closing Date among Subordinated Term Agent, the Agents, the Loan Parties and ABL Agent, as amended, restated, supplemented, waived, extended, renewed, replaced or otherwise modified from time to time as permitted therein.

"Subsection 2.8 Additional Amendment": as defined in Subsection 2.8(c).

"Subsidiary": as to any Person, a corporation, partnership, limited liability company or other entity (a) of which shares of stock or other ownership interests having ordinary voting power (other than stock or such other ownership interests having such power only by reason of the happening of a contingency) to elect a majority of the Board of Directors or other managers of such corporation, partnership, limited liability company or other entity are at the time owned by such Person, or (b) the management of which is otherwise controlled, directly or indirectly through one or more intermediaries, or both, by such Person and, in the case of this clause (b), which is treated as a consolidated subsidiary for accounting purposes. Unless otherwise qualified, all references to a "Subsidiary" or to "Subsidiaries" in this Agreement shall refer to a Subsidiary or Subsidiaries of the Borrower.

"Subsidiary Guarantor": each Domestic Subsidiary that is a Wholly Owned Subsidiary (other than any Excluded Subsidiary) of the Borrower which executes and delivers a Subsidiary Guaranty pursuant to Subsection 7.9 or otherwise, in each case, unless and until such time as the respective Subsidiary Guarantor (a) ceases to constitute a Domestic Subsidiary of the Borrower in accordance with the terms and provisions hereof, (b) is designated an Unrestricted Subsidiary pursuant to the terms of this Agreement or (c) is released from all of its obligations under the Subsidiary Guaranty in accordance with terms and provisions thereof.

"Subsidiary Guaranty": the guaranty of the Term Loan Facility Obligations of the Borrower under the Loan Documents provided pursuant to the Guarantee and Collateral Agreement.

"Successor Borrower": as defined in Subsection 8.7(a)(i).

"Tax Restructuring Agreements": (i) the installment agreement for the payment of delinquent taxes between Borrower and the Liberty County Tax Assessor-Collector's Office, dated as of [_____], and (ii) the installment agreement for the payment of delinquent taxes between Borrower and the [Liberty City and School District Tax Assessor-Collector's Office], dated as of [_____].

"Tax Sharing Agreement": any Tax Sharing Agreement entered into between the Borrower and New Holdings and/or any Parent Entity, in form and substance reasonably satisfactory to the Administrative Agent, as the same may be amended, restated, supplemented, waived or otherwise modified from time to time.

"Taxes": any and all present or future income, stamp or other taxes, levies, imposts, duties, charges, fees, deductions or withholdings, now or hereafter imposed, levied, collected, withheld or assessed by any Governmental Authority.

"Temporary Cash Investments": any of the following: (i) any investment in (x) direct obligations of the United States of America, a member state of the European Union or any country in whose currency funds are being held pending their application in the making of an investment or capital expenditure by the Borrower or a Restricted Subsidiary in that country or with such funds, or any agency or instrumentality of any thereof, or obligations Guaranteed by the United States of America or a member state of the European Union or any country in whose currency funds are being held pending their application in the making of an investment or capital expenditure by the Borrower or a Restricted Subsidiary in that country or with such funds, or any agency or instrumentality of any of the foregoing, or obligations guaranteed by any of the foregoing or (y) direct obligations of any foreign country recognized by the United States of America rated at least "A" by S&P or "A-1" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (ii) overnight bank deposits, and investments in time deposit accounts, certificates of deposit, bankers' acceptances and money market deposits (or, with respect to foreign banks, similar instruments) maturing not more than one year after the date of acquisition thereof issued by (x) any bank or other institutional lender under this Agreement or any ABL Facility or any affiliate thereof or (y) a bank or trust company that is organized under the laws of the United States of America, any state thereof or any foreign country recognized by the United States of America having capital and surplus aggregating in excess of $250,000,000 (or the foreign currency equivalent thereof) and whose long term debt is rated at least "A" by S&P or "A-1" by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization) at the time such Investment is made, (iii) repurchase obligations with a term of not more than 30 days for underlying securities or instruments of the types described in clause (i) or (ii) above entered into with a bank meeting the qualifications described in clause (ii) above, (iv) Investments in commercial paper, maturing not more than 270 days after the date of acquisition, issued by a Person (other than that of the Borrower or any of its Subsidiaries), with a rating at the time as of which any Investment therein is made of "P-2" (or higher) according to Moody's or "A-2" (or higher) according to S&P (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's

then exists, the equivalent of such rating by any nationally recognized rating organization), (v) Investments in securities maturing not more than one year after the date of acquisition issued or fully guaranteed by any state, commonwealth or territory 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, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (vi) Indebtedness or Preferred Stock (other than of the Borrower or any of its Subsidiaries) having a rating of "A" or higher by S&P or "A2" or higher by Moody's (or, in either case, the equivalent of such rating by such organization or, if no rating of S&P or Moody's then exists, the equivalent of such rating by any nationally recognized rating organization), (vii) investment funds investing 95.0% of their assets in securities of the type described in clauses (i) through (vi) above (which funds may also hold reasonable amounts of cash pending investment and/or distribution), and (viii) any money market deposit accounts issued or offered by a domestic commercial bank or a commercial bank organized and located in a country recognized by the United States of America, in each case, having capital and surplus in excess of $250,000,000 (or the foreign currency equivalent thereof), or investments in money market funds subject to the risk limiting conditions of Rule 2a-7 (or any successor rule) of the SEC under the Investment Company Act of 1940, as amended.

"Term Loan Facility Obligations": obligations of the Borrower and the other Loan Parties from time to time arising under or in respect of the due and punctual payment of (i) the principal of and premium, if any, and interest (including interest accruing during (or that would accrue but for) the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding) on the Term Loans, when and as due, whether at maturity, by acceleration, upon one or more dates set for prepayment or otherwise and (ii) all other monetary obligations, including fees, costs, expenses and indemnities, whether primary, secondary, direct, contingent, fixed or otherwise (including monetary obligations incurred during the pendency of any bankruptcy, insolvency, receivership or other similar proceeding, regardless of whether allowed or allowable in such proceeding), of the Borrower and the other Loan Parties under this Agreement and the other Loan Documents.

"Term Loan Priority Collateral": as defined in the Subordinated Notes Intercreditor Agreement.

"Term Loans": the Initial Term Loans and Extended Term Loans, as the context shall require.

"Third Lien Obligations": (i) the Term Loan Facility Obligations and (ii) the Additional Obligations and Refinancing Indebtedness in respect of the Indebtedness described in this clause (ii) (other than any such Additional Obligations and Refinancing Indebtedness that are unsecured or secured by a Lien ranking junior to the Lien securing the Term Loan Facility Obligations) secured by a third priority interest in the Collateral.

"third priority": with respect to any Lien purported to be created in any Collateral pursuant to any Security Document, that such Lien is the third most senior Lien to which such Collateral is subject (subject to Permitted Liens applicable to such Collateral which have priority over the respective Liens on such Collateral created pursuant to the relevant Security Document

(or, in the case of Collateral constituting Pledged Stock (as defined in the Guarantee and Collateral Agreement), Permitted Liens of the type described in clauses (a), (l), (m), (n), (p) and, solely with respect to Permitted Liens described in the foregoing clauses, (o) of the definition thereof)). For purposes of this definition, a Lien purported to be created in any Collateral pursuant to any Security Document will be construed as the "third most senior Lien" to which such Collateral is subject, notwithstanding the existence of a Permitted Lien on the Collateral that is pari passu with or senior to the Lien on such Collateral, so long as such Permitted Lien is subject to the terms of the Subordinated Notes Intercreditor Agreement or any Other Intercreditor Agreement.

"Total Liquidity": at any time, the sum of (a) the aggregate amount available to be borrowed by any Loan Party under the ABL Facility and any other revolving credit facility plus (b) the Unrestricted Cash of the Borrower and its Restricted Subsidiaries.

"Trade Payable Restructuring Agreements": restructuring agreements between Borrower and [_____] and [_____], dated as of [_____].

"Trade Payables": with respect to any Person, any accounts payable or any indebtedness or monetary obligation to trade creditors created, assumed or guaranteed by such Person arising in the ordinary course of business in connection with the acquisition of goods or services.

"Tranche": with respect to Term Loans or commitments, refers to whether such Term Loans or commitments are (1) Initial Term Loans or Initial Term Loan Commitments, or (2) Extended Term Loans (of the same Extension Series).

"Transactions": collectively, any or all of the following: (i) the entry into this Agreement and the Loan Documents and the Incurrence of Indebtedness thereunder, (ii) the consummation of the Plan of Reorganization, (iii) the refinancing of outstanding Indebtedness with proceeds of the Term Loans and loans under the ABL Facility and (iv) all other transactions relating to any of the foregoing (including payment of fees and expenses related to any of the foregoing).

"Transferee": any Participant or Assignee.

"Treasury Capital Stock": as defined in Subsection 8.2(b)(i).

"Type": the type of Term Loan determined based on the interest option applicable thereto, with there being two Types of Term Loans hereunder, namely ABR Loans and Eurodollar Loans.

"UCC": the Uniform Commercial Code as in effect in the State of New York from time to time.

"Underfunding": the excess of the present value of all accrued benefits under a Plan (based on those assumptions used to fund such Plan), determined as of the most recent annual valuation date, over the value of the assets of such Plan allocable to such accrued benefits.

"United States Person": any United States person within the meaning of Section 7701(a)(30) of the Code.

"Unrestricted Cash": the aggregate amount of cash, Cash Equivalents and Temporary Cash Investments included in the cash accounts that would be listed on the consolidated balance sheet of the Borrower and its Restricted Subsidiaries prepared in accordance with GAAP as of the end of the Most Recent Four Quarter Period to the extent such cash is not classified as "restricted" for financial statement purposes.

"Unrestricted Subsidiary": (i) any Subsidiary of the Borrower that at the time of determination is an Unrestricted Subsidiary, as designated by the Board of Directors in the manner provided below, and (ii) any Subsidiary of an Unrestricted Subsidiary. The Board of Directors may designate any Subsidiary of the Borrower (including any newly acquired or newly formed Subsidiary of the Borrower) to be an Unrestricted Subsidiary unless such Subsidiary or any of its Subsidiaries owns any Capital Stock or Indebtedness of, or owns or holds any Lien on any property of, the Borrower or any other Restricted Subsidiary of the Borrower that is not a Subsidiary of the Subsidiary to be so designated or such Subsidiary was previously designated as an Unrestricted Subsidiary and subsequently designated as a Restricted Subsidiary; provided, that (A) such designation was made at or prior to the Closing Date, or (B) the Subsidiary to be so designated has total consolidated assets of $1,000 or less or (C) if such Subsidiary has consolidated assets greater than $1,000, then such designation would be permitted under Subsection 8.2 and (D) immediately before and after such designation, no Event of Default shall have occurred and be continuing. The Board of Directors may designate any Unrestricted Subsidiary to be a Restricted Subsidiary; provided, that immediately after giving effect to such designation (x) the Borrower could Incur at least $1.00 of additional Indebtedness under Subsection 8.1(a), (y) the Consolidated Coverage Ratio would be greater than it was immediately prior to giving effect to such designation or and (z) immediately before and after such designation, no Event of Default shall have occurred and be continuing. Any such designation by the Board of Directors shall be evidenced to the Administrative Agent by promptly filing with the Administrative Agent a copy of the resolution of the Borrower's Board of Directors giving effect to such designation and a certificate of a Responsible Officer of the Borrower certifying that such designation complied with the foregoing provisions.

"U.S. Tax Compliance Certificate": as defined in Subsection 4.11(b)(ii)(2).

"Voting Stock": as to any entity, all classes of Capital Stock of such entity then outstanding and normally entitled to vote in the election of directors or all interests in such entity with the ability to control the management or actions of such entity.

"Wholly Owned Subsidiary": as to any Person, any Subsidiary of such Person of which such Person owns, directly or indirectly through one or more Wholly Owned Subsidiaries, all of the Capital Stock of such Subsidiary other than directors qualifying shares or shares held by nominees.

1.2 Other Definitional Provisions. Unless otherwise specified therein, all terms defined in this Agreement shall have the defined meanings when used in any

Notes, any other Loan Document or any certificate or other document made or delivered pursuant hereto.

(a) As used herein and in any Notes and any other Loan Document, and any certificate or other document made or delivered pursuant hereto or thereto, accounting terms relating to the Borrower and its Restricted Subsidiaries not defined in Subsection 1.1 and accounting terms partly defined in Subsection 1.1, to the extent not defined, shall have the respective meanings given to them under GAAP.

(b) The words "hereof", "herein" and "hereunder" and words of similar import when used in this Agreement shall refer to this Agreement as a whole and not to any particular provision of this Agreement, and Section, Subsection, Schedule and Exhibit references are to this Agreement unless otherwise specified. The words "include", "includes" and "including" shall be deemed to be followed by the phrase "without limitation".

(c) Any financial ratios, including any required to be satisfied in order for a specific action to be permitted under this Agreement, shall be calculated by dividing the appropriate component by the other component, carrying the result to one place more than the number of places by which such ratio is expressed herein and rounding the result up or down to the nearest number (with a rounding-up if there is no nearest number).

(d) Any references in this Agreement to "cash and/or Cash Equivalents", "cash, Cash Equivalents and/or Temporary Cash Investments" or any similar combination of the foregoing shall be construed as not double counting cash or any other applicable amount which would otherwise be duplicated therein.

(e) The meanings given to terms defined herein shall be equally applicable to both the singular and plural forms of such terms.

SECTION 2

Amount and Terms of Commitments

2.1 Initial Term Loans. Subject to the terms and conditions hereof, in accordance with the terms of the Plan of Reorganization, each Lender holding an Initial Term Loan Commitment shall be deemed to have made, in Dollars, on the Closing Date, a term loan (each, an "Initial Term Loan") to the Borrower in an aggregate principal amount set forth opposite such Lender's name in Schedule A under the heading "Initial Term Loan Commitment", as such amount may be adjusted or reduced pursuant to the terms hereof, which Initial Term Loans:

(i) except as hereinafter provided, shall, at the option of the Borrower, be incurred and maintained as, and/or converted into, ABR Loans or Eurodollar Loans; and

(ii) shall be deemed made by each such Lender in an aggregate principal amount which does not exceed the Initial Term Loan Commitment of such Lender.

Once repaid, Initial Term Loans incurred hereunder may not be reborrowed. On the Closing Date (after giving effect to the incurrence of Initial Term Loans on such date), the Initial Term Loan Commitment of each Lender shall terminate.

2.2 Notes. (a) The Borrower agrees that, upon the request to the Administrative Agent by any Lender, in order to evidence such Lender's Loan, the Borrower will execute and deliver to such Lender a promissory note in form and substance reasonably acceptable to the Administrative Agent and the Borrower (each, as amended, restated, supplemented, replaced or otherwise modified from time to time, a "Note"), payable to such Lender and in a principal amount equal to the unpaid principal amount of the applicable Loans made (or acquired by assignment pursuant to Subsection 11.6(b)) by such Lender to the Borrower. Each Note shall be payable as provided in Subsection 2.2(b) and provide for the payment of interest in accordance with Subsection 4.1.

(b) The Initial Term Loans of all the Lenders shall be payable on the Maturity Date (subject to reduction as provided in Subsection 4.4).

2.3 [Reserved].

2.4 [Reserved].

2.5 Repayment of Loans. (a) The Borrower hereby unconditionally promises to pay to the Administrative Agent (in the currency in which such Term Loan is denominated) for the account of each Lender the then unpaid principal amount of each Initial Term Loan of such Lender made to the Borrower, on the Maturity Date (or such earlier date on which the Initial Term Loans become due and payable pursuant to Section 9). The Borrower hereby further agrees to pay interest on the unpaid principal amount of such Initial Term Loans from time to time outstanding from the date hereof until payment in full thereof at the rates per annum, and on the dates, set forth in Subsection 4.1.

(b) Each Lender shall maintain in accordance with its usual practice an account or accounts evidencing indebtedness of the Borrower to such Lender resulting from each Loan of 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.

(c) The Administrative Agent shall maintain the Register pursuant to Subsection 11.6(b), and a subaccount therein for each Lender, in which shall be recorded (i) the amount of each Loan made hereunder, the Type thereof and each Interest Period applicable thereto, (ii) the amount of any principal or interest due and payable or to become due and payable from the Borrower to each applicable Lender hereunder and (iii) the amount of any sum received by the Administrative Agent hereunder from the Borrower and each applicable Lender's share thereof.

(d) The entries made in the Register and the accounts of each Lender maintained pursuant to Subsection 2.5(c) shall, to the extent permitted by applicable law, be prima facie

evidence of the existence and amounts of the obligations of the Borrower therein recorded; provided, however, that the failure of any Lender or the Administrative Agent to maintain the Register or any such account, or any error therein, shall not in any manner affect the obligation of the Borrower to repay (with applicable interest) the Loans made to the Borrower by such Lender in accordance with the terms of this Agreement.

2.6 [Reserved].

2.7 [Reserved].

2.8 Extension of Term Loans. (a) The Borrower may at any time and from time to time request that all or a portion of the Term Loans of one or more Tranches (including any Extended Term Loans) existing at the time of such request (each, an "Existing Term Tranche" and the Term Loans of such Tranche, the "Existing Term Loans") be converted to extend the scheduled maturity date(s) of any payment of principal with respect to all or a portion of any principal amount of any Existing Term Tranche (any such Existing Term Tranche which has been so extended, an "Extended Term Tranche" and the Term Loans of such Tranche, the "Extended Term Loans" or "Extended Loans") and to provide for other terms consistent with this Subsection 2.8; provided that (i) any such request shall be made in writing by the Borrower to all Lenders with Term Loans with a like maturity date (whether under one or more Tranches) on a pro rata basis (based on the aggregate outstanding principal amount of the applicable Term Loans), and (ii) any applicable Minimum Extension Condition shall be satisfied unless waived by the Borrower. In order to establish any Extended Term Tranche, the Borrower shall provide a written notice to the Administrative Agent (who shall provide a copy of such notice to each of the Lenders of the applicable Existing Term Tranche) (an "Extension Request") setting forth the proposed terms of the Extended Term Tranche to be established, which terms shall be identical to those applicable to the Existing Term Tranche from which they are to be extended (the "Specified Existing Term Tranche"), except (w) all or any of the final maturity dates of such Extended Term Tranches may be delayed to later dates than the final maturity dates of the Specified Existing Term Tranche, (x) (A) the interest margins with respect to the Extended Term Tranche may be higher or lower than the interest margins for the Specified Existing Term Tranche and/or (B) additional fees may be payable to the Lenders providing such Extended Term Tranche in addition to or in lieu of any increased margins contemplated by the preceding clause (A), in each case to the extent provided in the applicable Extension Amendment, (y) any optional or mandatory prepayment applicable to any Extended Term Tranche may be directed first to the prepayment of the Specified Existing Term Tranche and (z) amortization with respect to the Extended Term Tranche may be greater or lesser than amortization for the Specified Existing Term Tranche; provided that, notwithstanding anything to the contrary in this Subsection 2.8 or otherwise, (1) assignments and participations of Extended Term Tranches shall be governed by the same or, at the Borrower's discretion, more restrictive assignment and participation provisions applicable to Initial Term Loans set forth in Subsection 11.6, and (2) subject to clause (z) above, no repayment of Extended Term Tranches shall be permitted unless such repayment is accompanied by an at least pro rata repayment of all earlier maturing Tranches (including Extended Term Tranches) (or all earlier maturing Tranches (including Extended Term Tranches) shall otherwise be or have been terminated

and repaid in full). No Lender shall have any obligation to agree to have any of its Existing Term Loans converted into an Extended Term Tranche pursuant to any Extension Request. Any Extended Term Tranche shall constitute a separate Tranche of Term Loans from the Specified Existing Term Tranches and from any other Existing Term Tranches (together with any other Extended Term Tranches so established on such date).

(b) The Borrower shall provide the applicable Extension Request at least ten (10) Business Days prior to the date on which Lenders under the applicable Existing Term Tranche or Existing Term Tranches are requested to respond. Any Lender (an "Extending Lender") wishing to have all or a portion of its Specified Existing Term Tranche converted into an Extended Term Tranche shall notify the Administrative Agent in writing (each, an "Extension Election") on or prior to the date specified in such Extension Request of the amount of its Specified Existing Term Tranche that it has elected to convert into an Extended Term Tranche. In the event that the aggregate amount of the Specified Existing Term Tranche subject to Extension Elections exceeds the amount of Extended Term Tranches requested pursuant to the Extension Request, the Specified Existing Term Tranches subject to Extension Elections shall be converted to Extended Term Tranches on a pro rata basis based on the amount of Specified Existing Term Tranches included in each such Extension Election. In connection with any extension of Term Loans pursuant to this Subsection 2.8 (each, an "Extension"), the Borrower shall agree to such procedures regarding timing, rounding and other administrative adjustments to ensure reasonable administrative management of the credit facilities hereunder after such Extension, as may be established by, or acceptable to, the Administrative Agent, in each case acting reasonably to accomplish the purposes of this Subsection 2.8.

(c) Extended Term Tranches shall be established pursuant to an amendment (an "Extension Amendment") to this Agreement (which may include amendments to (i) provisions related to maturity, interest margins, fees, amortization or prepayments referenced in clauses (w) through (z) of Subsection 2.8(a) and (ii) the definitions of "Additional Obligations" and "Refinancing Indebtedness" and Subsection 8.8(b) to amend the maturity date and the weighted average life to maturity requirements, from the Maturity Date of the Initial Term Loans and weighted average life to maturity of the Initial Term Loans to the extended maturity date and the weighted average life to maturity of such Extended Term Tranche, as applicable, and which, in each case, except to the extent expressly contemplated by the third to last sentence of this Subsection 2.8(c) and notwithstanding anything to the contrary set forth in Subsection 11.1, shall not require the consent of any Lender other than the Extending Lenders with respect to the Extended Term Tranches established thereby) executed by the Loan Parties, the Administrative Agent, and the Extending Lenders. No Extension Amendment shall provide for any Extended Term Tranche in an aggregate principal amount that is less than $10,000,000. Notwithstanding anything to the contrary in this Agreement and without limiting the generality or applicability of Subsection 11.1 to any Subsection 2.8 Additional Amendments, any Extension Amendment may provide for additional terms and/or additional amendments other than those referred to or contemplated above (any such additional amendment, a "Subsection 2.8 Additional Amendment") to this Agreement and the other Loan Documents; provided that such Subsection 2.8 Additional Amendments do not become effective prior to the time that such Subsection 2.8 Additional Amendments have been consented to (including, without limitation, pursuant to consents applicable to holders of any Extended Term Tranches provided for in any Extension Amendment) by such of the Lenders, Loan Parties and other parties (if any) as may be required

in order for such Subsection 2.8 Additional Amendments to become effective in accordance with Subsection 11.1; provided, further, that no Extension Amendment may provide for any Extended Term Tranche to be secured by any Collateral or other assets of any Loan Party that does not also secure the Existing Term Tranches. It is understood and agreed that each Lender has consented for all purposes requiring its consent, and shall at the effective time thereof be deemed to consent to each amendment to this Agreement and the other Loan Documents authorized by this Subsection 2.8 and the arrangements described above in connection therewith except that the foregoing shall not constitute a consent on behalf of any Lender to the terms of any Subsection 2.8 Additional Amendment. In connection with any Extension Amendment, at the request of the Administrative Agent or the Extending Lenders, the Borrower shall deliver an opinion of counsel reasonably acceptable to the Administrative Agent as to the enforceability of such Extension Amendment, this Agreement as amended thereby, and such of the other Loan Documents (if any) as may be amended thereby.

(d) Notwithstanding anything to the contrary contained in this Agreement, on any date on which any Existing Term Tranche is converted to extend the related scheduled maturity date(s) in accordance with clause (a) above (an "Extension Date"), in the case of the Specified Existing Term Tranche of each Extending Lender, the aggregate principal amount of such Specified Existing Term Tranche shall be deemed reduced by an amount equal to the aggregate principal amount of Extended Term Tranche so converted by such Lender on such date, and such Extended Term Tranches shall be established as a separate Tranche from the Specified Existing Term Tranche and from any other Existing Term Tranches (together with any other Extended Term Tranches so established on such date).

(e) If, in connection with any proposed Extension Amendment, any Lender declines to consent to the applicable extension on the terms and by the deadline set forth in the applicable Extension Request (each such other Lender, a "Non-Extending Lender") then the Borrower may, on written notice to the Administrative Agent and the Non-Extending Lender, (i) replace such Non-Extending Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Subsection 11.6 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to provide Extended Loans on the terms set forth in such Extension Amendment; and provided, further, that all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Term Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender concurrently with such Assignment and Acceptance or (ii) if no Event of Default exists under Subsection 9.1(a) or (f), upon notice to the Administrative Agent, prepay the Existing Term Loans, in whole or in part (including any premium or penalty), subject to Subsection 4.12. In connection with any such replacement under this Subsection 2.8, if the Non-Extending Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (A) the date on which the replacement Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (B) the date as of which all obligations of the Borrower owing to the Non-Extending Lender relating to the Existing Term Loans so assigned shall be paid in full by the assignee Lender to such Non-Extending Lender, then such Non-Extending Lender shall be

deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date, the Administrative Agent shall record such assignment in the Register and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Non-Extending Lender.

(f) Following any Extension Date but prior to the Maturity Date with respect to the Term Loans of such Non-Extending Lender, with the written consent of the Borrower, any Non-Extending Lender may elect to have all or a portion of its Existing Term Loans deemed to be an Extended Term Loan under the applicable Extended Term Tranche on any date (each date a "Designation Date") prior to the maturity date of such Extended Term Tranche; provided that (i) such Lender shall have provided written notice to the Borrower and the Administrative Agent at least 10 Business Days prior to such Designation Date (or such shorter period as the Administrative Agent may agree in its reasonable discretion) and (ii) except as set forth in Subsection 2.8(c), no more than three Designation Dates may occur in any one year period without the written consent of the Administrative Agent. Following a Designation Date, the Existing Term Loans held by such Lender so elected to be extended will be deemed to be Extended Term Loans of the applicable Extended Term Tranche, and any Existing Term Loans held by such Lender not elected to be extended, if any, shall continue to be "Existing Term Loans" of the applicable Tranche.

(g) With respect to all Extensions consummated by the Borrower pursuant to this Subsection 2.8, (i) such Extensions shall not constitute optional or mandatory payments or prepayments for purposes of Subsection 4.4 and (ii) no Extension Request is required to be in any minimum amount or any minimum increment, provided that the Borrower may at its election specify as a condition (a "Minimum Extension Condition") to consummating any such Extension that a minimum amount (to be determined and specified in the relevant Extension Request in the Borrower's sole discretion and may be waived by the Borrower) of Existing Term Loans of any or all applicable Tranches be extended. The Administrative Agent and the Lenders hereby consent to the transactions contemplated by this Subsection 2.8 (including, for the avoidance of doubt, payment of any interest, fees or premium in respect of any Extended Term Loans on such terms as may be set forth in the relevant Extension Request) and hereby waive the requirements of any provision of this Agreement (including, without limitation, Subsections 4.4 and 4.8) or any other Loan Document that may otherwise prohibit any such Extension or any other transaction contemplated by this Subsection 2.8.

2.9 Defaulting Lenders.

(a) Notwithstanding anything to the contrary contained in this Agreement, if any Lender becomes a Defaulting Lender, then, until such time as that Lender is no longer a Defaulting Lender, to the extent permitted by applicable law:

(i) Such Defaulting Lender's right to approve or disapprove any amendment, waiver or consent with respect to this Agreement shall be restricted as set forth in the definition of "Required Lenders" and Subsection 11.1.

(ii) Any payment of principal, interest, fees or other amounts received by the Administrative Agent for the account of such Defaulting Lender (whether voluntary or mandatory, at maturity, pursuant to Section 9 or otherwise) or received by the Administrative Agent from a Defaulting Lender pursuant to Subsection 11.7(b) 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*, as the Borrower may request (so long as no Default or Event of Default exists), to the funding of any Term 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; *third*, if so determined by the Administrative Agent and the Borrower, to be held in a deposit account and released pro-rata in order to satisfy such Defaulting Lender's potential future funding obligations with respect to Term Loans under this Agreement; *fourth*, to the payment of any amounts owing to the Lenders as a result of any judgment of a court of competent jurisdiction obtained by any Lender against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; *fifth*, so long as no Default or Event of Default exists, to the payment of any amounts owing to the Borrower as a result of any judgment of a court of competent jurisdiction obtained by the Borrower against such Defaulting Lender as a result of such Defaulting Lender's breach of its obligations under this Agreement; and *sixth*, 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 Term Loans in respect of which such Defaulting Lender has not fully funded its appropriate share, and (y) such Term Loans were made at a time when the conditions set forth in Subsection 6.2 were satisfied or waived, such payment shall be applied solely to pay the Term Loans of all Non-Defaulting Lenders on a pro rata basis prior to being applied to the payment of any Term Loans of such Defaulting Lender until such time as all Term Loans are held by the Lenders pro-rata in accordance with the commitments hereunder.

(b) If the Borrower and the Administrative Agent agree in writing that a Lender is no longer a Defaulting Lender, the Administrative Agent will so notify the parties hereto, whereupon as of the effective date specified in such notice and subject to any conditions set forth therein, that Lender will, to the extent applicable, purchase that portion of outstanding Term Loans of the other Lenders or take such other actions as the Administrative Agent may determine to be necessary to cause the Term Loans to be held on a pro-rata basis by the Lenders in accordance with their pro rata share), whereupon such Lender will cease to be a Defaulting Lender; provided that no adjustments will be made retroactively with respect to fees accrued or payments made by or on behalf of the Borrower while that Lender was a Defaulting Lender; and provided, further, that except to the extent otherwise expressly agreed by the affected parties, no change hereunder from Defaulting Lender to Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender.

SECTION 3

[Reserved]

SECTION 4

General Provisions Applicable to Loans

4.1 Interest Rates and Payment Dates. (a) Each Eurodollar Loan shall bear interest for each day during each Interest Period with respect thereto at a rate per annum equal to the Adjusted LIBOR Rate determined for such Interest Period plus the Applicable Margin in effect for such day; provided, until December 31, 2016, interest shall be payable in-kind ("PIK Interest"), which shall be capitalized on each Interest Payment Date by adding such amount to the Outstanding Amount of the Term Loans; provided, further, after December 31, 2016, subject to the terms of the Subordinated Notes Intercreditor Agreement, the Borrower may, by providing written notice to the Administrative Agent three (3) Business Days prior to the applicable Interest Payment Date, elect to pay cash interest in lieu of all or any part of such PIK Interest so long as, at the time of the making of any such payment, the Borrower has first paid in cash all capitalized PIK Interest under the Senior Term Facility.

(b) Each ABR Loan shall bear interest for each day that it is outstanding at a rate per annum equal to the Alternate Base Rate in effect for such day plus the Applicable Margin in effect for such day; provided, until December 31, 2016, interest shall be PIK Interest, which shall be capitalized on each Interest Payment Date by adding such amount to the Outstanding Amount of the Term Loans; provided, further, after December 31, 2016, the Borrower may, by providing written notice to the Administrative Agent three (3) Business Days prior to the applicable Interest Payment Date, elect to pay cash interest in lieu of all or any part of such PIK Interest so long as, at the time of the making of any such payment, the Borrower has not first paid in cash all capitalized PIK Interest under the Senior Term Facility.

(c) Automatically upon the occurrence of and during the continuance of an Event of Default under Subsection 9.1(a) or (f), and after written notice to the Borrower from the Administrative Agent or the Required Lenders upon the occurrence of and during the continuance of any other Default or Event of Default, the principal of, and, to the extent permitted by law, interest on the Term Loans and any other amounts owing hereunder or under the other Loan Documents, shall bear interest for each day at a per annum rate which is equal to (x) in the case of principal, the rate that would otherwise be applicable thereto pursuant to the relevant foregoing provisions of this Subsection 4.1, plus 2.00% cash interest, (y) in the case of interest, the rate that would be otherwise applicable to principal of the related Term Loan pursuant to the relevant foregoing provisions of this Subsection 4.1 (other than clause (x) above) plus 2.00% cash interest and (z) in the case of other amounts due and owing or accruing, the rate described in clause (b) of this Subsection 4.1 for ABR Loans accruing interest at the Alternate Base Rate plus 2.00%, in each case from the date of such nonpayment until such amount is paid in full (as well after as before judgment).

(d) Interest shall be payable in cash in arrears on each Interest Payment Date; provided, that (i) any PIK Interest shall capitalize on each Interest Payment Date (unless the Borrower elects to pay any or all of such PIK Interest in cash) and (ii) interest accruing pursuant to clause (c) of this Subsection 4.1 shall be payable from time to time on demand.

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

4.2 Conversion and Continuation Options. (a) Subject to its obligations pursuant to Subsection 4.12(c), the Borrower may elect from time to time to convert outstanding Loans of a given Tranche from Eurodollar Loans to ABR Loans by the Borrower giving the Administrative Agent irrevocable notice of such election prior to 11:00 A.M., New York City time three (3) Business Days prior to such election. The Borrower may elect from time to time to convert outstanding Loans of a given Tranche from ABR Loans to Eurodollar Loans, by the Borrower giving the Administrative Agent irrevocable notice of such election prior to 11:00 A.M., New York City time at least three Business Days prior to such election.

(b) Any Eurodollar Loan may be continued as such upon the expiration of the then current Interest Period with respect thereto by the Borrower giving the Administrative Agent irrevocable notice of such continuation prior to 11:00 A.M., New York City time three Business Days prior to such continuation, including the length of the next Interest Period to be applicable to such Eurodollar Loan, determined in accordance with the applicable provisions of the term "Interest Period" set forth in Subsection 1.1.

(c) If the Borrower wishes to request Eurodollar Loans having an Interest Period other than one, two, three or six months in duration as provided in the definition of "Interest Period", the applicable notice must be received by the Administrative Agent not later than 11:00 a.m. four Business Days prior to the requested date of such conversion or continuation, whereupon the Administrative Agent shall give prompt notice to the Lenders of such request and determine whether the requested Interest Period is acceptable to all of them.

(d) Each notice delivered by the Borrower pursuant to clause (a) or clause (b) above shall be in the form of a Committed Loan Notice specifying (i) whether the Borrower is requesting a conversion of Loans from one Type to the other, or a continuation of Eurodollar Loans, (ii) the requested date of the conversion or continuation, as the case may be (which shall be a Business Day), (iii) the principal amount of Loans to be converted or continued, (iv) the

Type of Loans to which existing Loans are to be converted, and (v) if applicable, the duration of the Interest Period with respect thereto. If the Borrower fails to specify a Type of Loan in such notice or if the Borrower fails to give a timely notice requesting a conversion or continuation, then the applicable Loans shall be made as, or converted to ABR Loans. Any such automatic conversion to ABR Loans shall be effective as of the last day of the Interest Period then in effect with respect to the applicable Eurodollar Loans. If the Borrower requests a conversion to, or continuation of Eurodollar Loans in any such notice, but fails to specify an Interest Period, it will be deemed to have specified an Interest Period of one month.

(e) Following receipt of a Committed Loan Notice, the Administrative Agent shall promptly notify each Lender of the amount of its pro rata share, and if no timely notice of a borrowing, conversion or continuation is provided by the Borrower, the Administrative Agent shall notify each Lender of the details of any automatic conversion to ABR Loans described in Subsection 4.2(d).

(f) Except as otherwise provided herein, a Eurodollar Loan may be continued or converted only on the last day of an Interest Period for such Eurodollar Loan. During the existence of a Default, no Loans may be converted to or continued as Eurodollar Loans without the consent of the Required Lenders.

(g) The Administrative Agent shall promptly notify the Borrower and the Lenders of the interest rate applicable to any Interest Period for Eurodollar Loans upon determination of such interest rate. At any time that ABR Loans are outstanding, the Administrative Agent shall notify the Borrower and the Lenders of any change in the prime rate used in determining the Alternate Base Rate promptly following such change.

4.3 Minimum Amounts; Maximum Sets. All conversions and continuations of Loans hereunder and all selections of Interest Periods hereunder shall be in such amounts and be made pursuant to such elections so that, after giving effect thereto, the aggregate principal amount of the Eurodollar Loans comprising each Set shall be equal to $5,000,000 or a whole multiple of $1,000,000 in excess thereof and so that there shall not be more than five Sets at any one time outstanding.

4.4 Optional and Mandatory Prepayments. (a) [Reserved].

(b) Subject to the terms of the Subordinated Notes Intercreditor Agreement, the Borrower may at any time and from time to time prepay the Loans made to it, in whole or in part, subject to Subsection 4.12, without premium or penalty (except as provided below), upon notice by the Borrower to the Administrative Agent prior to 1:00 P.M., New York City time three Business Days prior to the date of prepayment (in the case of Eurodollar Loans), or prior to 1:00 P.M., New York City time at least one (1) Business Day prior to the date of prepayment (in the case of ABR Loans); provided that (i) the Borrower has paid all PIK Interest due and owing pursuant to the terms of the Senior Term Debt Credit Agreement in cash or (ii) such prepayment would not violate the terms of (or cause an event of default under) the Senior Term Debt Credit Agreement or the ABL Credit Agreement. Such notice shall specify, in the case of any prepayment of Loans, the applicable Tranche being repaid, and if a combination thereof, the principal amount allocable to each, the date and amount of prepayment and whether the

prepayment is of Eurodollar Loans or ABR Loans or a combination thereof, and, in each case if a combination thereof, the principal amount allocable to each. Any such notice may state that such notice is conditioned upon the occurrence or non-occurrence of any event specified therein (including the effectiveness of other credit facilities), in which case such notice may be revoked by the Borrower (by written notice to the Administrative Agent on or prior to the specified effective date) if such condition is not satisfied. Upon the receipt of any such notice the Administrative Agent shall promptly notify each affected Lender thereof. If any such notice is given and not revoked, the amount specified in such notice shall be due and payable on the date specified therein, together with (if a Eurodollar Loan is prepaid other than at the end of the Interest Period applicable thereto) any accrued and unpaid interest on the Loans being repaid and amounts payable pursuant to Subsection 4.12. Any voluntary prepayment of Eurodollar Loans shall be in a principal amount of $5,000,000 or a whole multiple of $1,000,000 in excess thereof; and (B) any voluntary prepayment of ABR Loans shall be in a principal amount of $500,000 or a whole multiple of $100,000 in excess thereof or, in each case, if less, the entire principal amount thereof then outstanding.

(c) Subject to the terms of the Subordinated Notes Intercreditor Agreement, (i) the Borrower shall, in accordance with Subsection 4.4(d), prepay the Term Loans to the extent required by Subsection 8.4(b), (ii) if on or after the Closing Date, the Borrower or any of its Restricted Subsidiaries shall Incur Indebtedness for borrowed money (excluding Indebtedness permitted pursuant to Subsection 8.1), the Borrower shall, in accordance with Subsection 4.4(d), prepay the Loans in an amount equal to 100.0% of the Net Cash Proceeds thereof minus the portion of such Net Cash Proceeds applied (to the extent Borrower or any of its Subsidiaries is required by the terms thereof) to prepay, repay or purchase other Indebtedness that is senior or *pari passu* with the Term Loan Facility Obligations on a pro rata basis with the Loans, in each case with such prepayment to be made on or before the fifth Business Day following notice given to each Lender of the Prepayment Date, as contemplated by Subsection 4.4(e), (iii) [reserved], and (iv) at any time an Event of Default has occurred and is continuing, within five (5) Business Days of the date of receipt by a Loan Party or its Subsidiaries of any Extraordinary Receipts in respect of the Collateral, the Borrower shall, in accordance with Subsection 4.4(d), prepay the Loans in an amount equal to 100.0% of such Extraordinary Receipts, net of any reasonable expenses incurred in collecting such Extraordinary Receipts and Taxes paid or payable in connection with such Extraordinary Receipts. Nothing in this Subsection 4.4(c) shall limit the rights of the Agents and the Lenders set forth in Section 9. Notwithstanding the provisions of clause (iii) of the previous sentence, any prepayment required pursuant to such clause (iii) shall be reduced by the amount necessary, if any, so that Total Liquidity is not less than $20,000,000 in excess of the amount required to be maintained by the Borrower in order to not trigger the "Excess Availability Trigger Date" pursuant to the definition thereof in the ABL Credit Agreement (as such definition exists as of the Closing Date) after giving effect to any such prepayment or if Total Liquidity is less than $20,000,000 in excess of the amount required to be maintained by the Borrower in order to not trigger the Excess Availability Trigger Date pursuant to the definition thereof in the ABL Credit Agreement (as such definition exists as of the Closing Date) immediately prior to the date on which such prepayment would otherwise have been required to be made, no such prepayment shall be required. Any prepayment pursuant to this Subsection 4.4(c) shall be accompanied by any accrued and unpaid interest on the Term Loans being repaid and amounts payable pursuant to Subsection 4.12.

(d) Subject to the penultimate sentence of Subsection 4.4(e), each prepayment of Term Loans pursuant to Subsection 4.4(c) shall be allocated pro rata among the Initial Term Loans and the Extended Term Loans. Each prepayment of Term Loans pursuant to Subsections 4.4(a), (b) and (c) shall be applied within each Tranche of Term Loans to the principal thereof.

(e) The Borrower shall give notice to the Administrative Agent of any mandatory prepayment of the Loans pursuant to Subsection 4.4(c)(i), (ii) or (iv), promptly (and in any event within five Business Days) upon becoming obligated to make such prepayment. Such notice shall state that the Borrower is offering to make or will make such mandatory prepayment (i) in the case of mandatory prepayments pursuant to Subsection 4.4(c)(i), on or before the date specified in Subsection 8.4(b) and (ii) in the case of mandatory prepayments pursuant to Subsection 4.4(c)(ii) or (iv) on or before the date specified in Subsection 4.4(c)(ii) or (iv), as the case may be (each, a "Prepayment Date"). Once given, such notice shall be irrevocable and all amounts subject to such notice shall be due and payable on the Prepayment Date (except as otherwise provided in the penultimate sentence of this Subsection 4.4(e)). Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall promptly give notice to each Lender of the prepayment and the Prepayment Date. The Borrower (in its sole discretion) may give each Lender the option (in its sole discretion) to elect to decline any such prepayment by giving notice of such election in writing to the Administrative Agent by 11:00 A.M., New York City time, on the date that is three (3) Business Days prior to the Prepayment Date. Upon receipt by the Administrative Agent of such notice, the Administrative Agent shall immediately notify the Borrower of such election. Any amount so declined by any Lender may, at the option of the Borrower, be applied to the payment or prepayment of Indebtedness, including any Junior Debt, or otherwise be retained by the Borrower and its Restricted Subsidiaries and/or applied by the Borrower or any of its Restricted Subsidiaries in any manner not inconsistent with this Agreement. If, notwithstanding the fact that a Lender has declined a prepayment in accordance with the foregoing, the Borrower nevertheless sends such declined prepayment to the Administrative Agent, the Administrative Agent shall return such declined prepayment to the Borrower by wire transfer of such funds in accordance with instructions provided to the Administrative Agent by the Borrower.

(f) Amounts prepaid on account of Term Loans pursuant to Subsection 4.4(b) or (c) may not be reborrowed.

(g) Notwithstanding the foregoing provisions of this Subsection 4.4, if at any time any prepayment of the Loans pursuant to Subsection 4.4(b) or (c) would result, after giving effect to the procedures set forth in this Agreement, in the Borrower incurring breakage costs under Subsection 4.12 as a result of Eurodollar Loans being prepaid other than on the last day of an Interest Period with respect thereto, then, the Borrower may, so long as no Default or Event of Default shall have occurred and be continuing, in its sole discretion, initially (i) deposit a portion (up to 100.0%) of the amounts that otherwise would have been paid in respect of such Eurodollar Loans with the Administrative Agent (which deposit must be equal in amount to the amount of such Eurodollar Loans not immediately prepaid), to be held as security for the obligations of the Borrower to make such prepayment pursuant to a cash collateral agreement to be entered into on terms reasonably satisfactory to the Administrative Agent with such cash collateral to be directly applied upon the first occurrence thereafter of the last day of an Interest Period with respect to such Eurodollar Loans (or such earlier date or dates as shall be requested by the Borrower) or (ii)

make a prepayment of the Loans in accordance with Subsection 4.4(b) with an amount equal to a portion (up to 100.0%) of the amounts that otherwise would have been paid in respect of such Eurodollar Loans (which prepayment, together with any deposits pursuant to clause (i) above, must be equal in amount to the amount of such Eurodollar Loans not immediately prepaid); provided that, in the case of either clause (i) or (ii) above, such unpaid Eurodollar Loans shall continue to bear interest in accordance with Subsection 4.1 until such unpaid Eurodollar Loans or the related portion of such Eurodollar Loans, as the case may be, have or has been prepaid. In addition, if the Borrower reasonably determines in good faith that any amounts attributable to Foreign Subsidiaries that are required to be applied to prepay Loans pursuant to Subsection 4.4(b) would result in a Tax liability of the Borrower or any of its Restricted Subsidiaries, then the Borrower shall prepay the Loans in accordance with Subsection 4.4(c) net of such Tax liability.

(h) Notwithstanding anything to the contrary herein, this Subsection 4.4 may be amended (and the Lenders hereby irrevocably authorize the Administrative Agent to enter into any such amendments) to the extent necessary to reflect differing amounts payable, and priorities of payments, to Lenders participating in any new classes or tranches of Loans added pursuant to Subsection 2.8, as applicable.

(i) [Reserved].

4.5 Administrative Agent's Fee. The Borrower agrees to pay to the Administrative Agent the fees set forth in the Administrative Agency Fee Letter.

4.6 Computation of Interest and Fees. (a) Interest shall be calculated on the basis of a 360-day year for the actual days elapsed. The Administrative Agent shall as soon as practicable notify the Borrower and the affected Lenders of each determination of an Adjusted LIBOR Rate. Any change in the interest rate on a Term Loan resulting from a change in the Alternate Base Rate or the Eurodollar Reserve Percentage shall become effective as of the opening of business on the day on which such change becomes effective. The Administrative Agent shall as soon as practicable notify the Borrower and the affected Lenders of the effective date and the amount of each such change in interest rate. Interest shall accrue on each Term Loan for the day on which the Term Loan is made, and shall not accrue on any Term Loan, or any portion thereof, for the day on which the Term Loan or such portion is paid, provided that any Term Loan that is repaid on the same day on which it is made shall, subject to Subsection 4.8(a), bear interest for one day.

(b) Each determination of an interest rate by the Administrative Agent pursuant to any provision of this Agreement shall be conclusive and binding for all purposes, absent manifest error. The Administrative Agent shall, at the request of the Borrower or any Lender, deliver to the Borrower or such Lender a statement showing in reasonable detail the calculations used by the Administrative Agent in determining any interest rate pursuant to Subsection 4.1, excluding any LIBOR Rate which is based upon the Reuters Monitor Money Rates Service page and any ABR Loan which is based upon the Alternate Base Rate.

4.7 Inability to Determine Interest Rate. If the Required Lenders determine that for any reason in connection with any request for a Eurodollar Loan or a

conversion to or continuation thereof that (i) Dollar deposits are not being offered to banks in the London interbank eurodollar market for the applicable amount and Interest Period of such Eurodollar Loan, (ii) adequate and reasonable means do not exist for determining the LIBOR Rate for any requested Interest Period with respect to any Eurodollar Loan or (iii) the LIBOR Rate for any requested Interest Period with respect to a proposed Eurodollar Loan does not adequately and fairly reflect the cost to such Lenders of funding such Loan, the Administrative Agent will so notify the Borrower and each Lender as soon as practicable thereafter. Thereafter, (x) the obligation of the Lenders to make or maintain Eurodollar Loans shall be suspended, and (y) in the event of a determination described in the preceding sentence with respect to the Eurodollar Rate component of the Base Rate, the utilization of the LIBOR Rate component in determining the Alternate Base Rate shall be suspended, in each case until the Administrative Agent (upon the instruction of the Required Lenders) revokes such notice. Upon receipt of such notice, the Borrower may revoke any pending request for a Borrowing of, conversion to or continuation of Eurodollar Loans or, failing that, will be deemed to have converted such request into a request for a Borrowing of ABR Loans in the amount specified therein.

4.8 Pro Rata Treatment and Payments. (a) Except as expressly otherwise provided herein, each payment (including each prepayment, but excluding payments made pursuant to Subsection 2.8, 4.9, 4.10, 4.11, 4.12, 4.13(d), 11.1(g) or 11.6) by the Borrower on account of principal of and interest on any Term Loans of a given Tranche (other than any payments pursuant to Subsection 4.4(c) to the extent declined by any Lender in accordance with Subsection 4.4(e)) shall be allocated by the Administrative Agent pro rata according to the respective outstanding principal amounts of such Term Loans then held by the respective Lenders. All payments (including prepayments) to be made by the Borrower hereunder, whether on account of principal, interest, fees or otherwise, shall be made free and clear of and without condition or deduction for any counterclaim, defense, recoupment or setoff and shall be made on or prior to the time expressly required hereunder or under such other Loan Document for such payment (or, if no such time is expressly required, prior to 2:00 P.M., New York City time), on the due date thereof to the Administrative Agent for the account of the Lenders holding the relevant Term Loans, the Lenders or the Administrative Agent, as the case may be, at the Administrative Agent's Office in Dollars in immediately available funds. Payments received by the Administrative Agent after such time may be deemed to have been received on the next succeeding Business Day and any applicable interest or fee shall continue to accrue. The Administrative Agent shall promptly distribute such payments to such Lenders if any such payment is received prior to 2:00 P.M., New York City time, on a Business Day, in like funds as received prior to the end of such Business Day and otherwise the Administrative Agent shall distribute such payment to such Lenders on the next succeeding Business Day. If any payment hereunder (other than payments on the Eurodollar Loans) becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day, and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension. If any payment on a Eurodollar Loan becomes due and payable on a day other than a Business Day, the maturity of such payment shall be extended to the next succeeding Business Day (and, with respect to payments of principal, interest thereon shall be payable at the then applicable rate during such extension) unless the result of such

extension would be to extend such payment into another calendar month, in which event such payment shall be made on the immediately preceding Business Day. This Subsection 4.8(a) may be amended in accordance with Subsection 11.1(d) to the extent necessary to reflect differing amounts payable, and priorities of payments, to Lenders participating in any new Tranches added pursuant to Subsection 2.8.

(b) [Reserved].

(c) Unless the Administrative Agent shall have received notice from the Borrower prior to the time at which any payment is due to the Administrative Agent for the account of the Lenders hereunder that the Borrower will not make such payment, the Administrative Agent may assume that the Borrower has made such payment on such date in accordance herewith and may, in reliance upon such assumption, distribute to the Lenders the amount due. In such event, if the Borrower has not in fact made such payment, then each of the Lenders, as the case may be, severally agrees to repay to the Administrative Agent forthwith on demand the amount so distributed to such Lender, in immediately available funds 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 Effective Rate and a rate determined by the Administrative Agent in accordance with banking industry rules on interbank compensation. A notice of the Administrative Agent to any Lender or the Borrower with respect to any amount owing under this Subsection 4.8(c) shall be conclusive, absent manifest error.

(d) [Reserved].

(e) The obligations of the Lenders hereunder to make payments pursuant to Subsection 10.7(a) are several and not joint. The failure of any Lender to make any payment under Subsection 10.7(a) on any date required hereunder shall not relieve any other Lender of its corresponding obligation to do so on such date, and no Lender shall be responsible for the failure of any other Lender to so make its payment under Subsection 10.7(a).

4.9 Illegality. If any Lender determines that any law has made it unlawful, or that any Governmental Authority has asserted that it is unlawful, for any Lender or its applicable Lending Office to maintain Loans whose interest is determined by reference to the Eurodollar Base Rate ("Affected Loans"), or to determine or charge interest rates based upon the Eurodollar Base Rate, or any Governmental Authority has imposed material restrictions on the authority of such Lender to purchase or sell, or to take deposits of, Dollars in the London interbank market, then, on notice thereof by such Lender to the Borrower through the Administrative Agent (which notice shall be withdrawn whenever such circumstances no longer exist), (i) any obligation of such Lender to make or continue Eurodollar Loans or to convert ABR Loans to Eurodollar Loans shall be suspended, and (ii) if such notice asserts the illegality of such Lender making or maintaining ABR Loans the interest rate on which is determined by reference to the LIBOR Rate component of the Alternate Base Rate, the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Alternate Base Rate, in each case until such Lender notifies the Administrative Agent and the Borrower that the circumstances giving rise to such determination no longer exist. Upon

receipt of such notice, (x) the Borrower shall, upon demand from such Lender (with a copy to the Administrative Agent), prepay or, if applicable, convert all Eurodollar Loans of such Lender to ABR Loans (the interest rate on which ABR Loans of such Lender shall, if necessary to avoid such illegality, be determined by the Administrative Agent without reference to the LIBOR Rate component of the Alternate Base Rate), either on the last day of the Interest Period therefor, if such Lender may lawfully continue to maintain such Eurodollar Loans to such day, or immediately, if such Lender may not lawfully continue to maintain such Eurodollar Loans and (y) if such notice asserts the illegality of such Lender determining or charging interest rates based upon the LIBOR Rate, the Administrative Agent shall during the period of such suspension compute the Alternative Base Rate applicable to such Lender without reference to the LIBOR Rate component thereof until the Administrative Agent is advised in writing by such Lender that it is no longer illegal for such Lender to determine or charge interest rates based upon the LIBOR Rate. Upon any such prepayment or conversion, the Borrower shall also pay accrued interest on the amount so prepaid or converted.

4.10 Requirements of Law. (a) If the adoption of or any change in any Requirement of Law or in the interpretation or application thereof applicable to any Lender, or compliance by any Lender with any request or directive (whether or not having the force of law) from any central bank or other Governmental Authority, in each case made subsequent to the Closing Date (or, if later, the date on which such Lender becomes a Lender):

(i) shall subject such Lender to any Tax of any kind whatsoever with respect to any Eurodollar Loans made or maintained by it or its obligation to make or maintain Eurodollar Loans, or change the basis of taxation of payments to such Lender in respect thereof, in each case, except for Non-Excluded Taxes, Taxes imposed by FATCA and Taxes measured by or imposed upon net income, or franchise Taxes, or Taxes measured by or imposed upon overall capital or net worth, or branch Taxes (in the case of such capital, net worth or branch Taxes, imposed in lieu of such net income Tax), of such Lender or its applicable lending office, branch, or any affiliate thereof;

(ii) shall impose, modify or hold applicable any reserve, special deposit, compulsory loan or similar requirement against assets held by, deposits or other liabilities in or for the account of, advances, loans or other extensions of credit by, or any other acquisition of funds by, any office of such Lender which is not otherwise included in the determination of the LIBOR Rate hereunder; or

(iii) shall impose on such Lender any other condition (excluding any Tax of any kind whatsoever);

and the result of any of the foregoing is to increase the cost to such Lender, by an amount which such Lender deems to be material, of making, converting into, continuing or maintaining Eurodollar Loans or to reduce any amount receivable hereunder in respect thereof, then, in any such case, upon notice to the Borrower from such Lender, through the Administrative Agent in accordance herewith, the Borrower shall promptly pay such Lender, upon its demand, any additional amounts necessary to compensate such Lender for such increased cost or reduced

amount receivable with respect to such Eurodollar Loans; provided that, in any such case, the Borrower may elect to convert the Eurodollar Loans made by such Lender hereunder to ABR Loans by giving the Administrative Agent at least one Business Days' notice of such election, in which case the Borrower shall promptly pay to such Lender, upon demand, without duplication, amounts theretofore required to be paid to such Lender pursuant to this Subsection 4.10(a) and such amounts, if any, as may be required pursuant to Subsection 4.12. If any Lender becomes entitled to claim any additional amounts pursuant to this Subsection 4.10(a), it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in this clause (a) has occurred and describing in reasonable detail the nature of such event, (y) as to the increased cost or reduced amount resulting from such event and (z) as to the additional amount demanded by such Lender and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any additional amounts payable pursuant to this Subsection 4.10(a) submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

(b) If any Lender shall have determined that the adoption of or any change in any Requirement of Law regarding capital adequacy or liquidity requirements or in the interpretation or application thereof or compliance by such Lender or any corporation controlling such Lender with any request or directive regarding capital adequacy or liquidity requirements (whether or not having the force of law) from any Governmental Authority, in each case, made subsequent to the Closing Date, does or shall have the effect of reducing the rate of return on such Lender's or such corporation's capital as a consequence of such Lender's obligations hereunder to a level below that which such Lender or such corporation could have achieved but for such change or compliance (taking into consideration such Lender's or such corporation's policies with respect to capital adequacy) by an amount deemed by such Lender to be material, then from time to time, within ten Business Days after submission by such Lender to the Borrower (through the Administrative Agent) of a written request therefor certifying (x) that one of the events described in this clause (b) has occurred and describing in reasonable detail the nature of such event, (y) as to the reduction of the rate of return on capital resulting from such event and (z) as to the additional amount or amounts demanded by such Lender or corporation and a reasonably detailed explanation of the calculation thereof, the Borrower shall pay to such Lender such additional amount or amounts as will compensate such Lender or corporation for such reduction. Such a certificate as to any additional amounts payable pursuant to this Subsection 4.10(b) submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

(c) Notwithstanding anything herein to the contrary, (i) the Dodd Frank Wall Street Reform and Consumer Protection Act, and all requests, rules, regulations, guidelines and directives promulgated thereunder or issued in connection therewith, and (ii) all requests, rules, guidelines or directives promulgated by the Bank for International Settlements, the Basel Committee on Banking Supervision (or any successor or similar authority) or the United States or foreign regulatory authorities, in each case pursuant to Basel III, in each case, shall be deemed to have been enacted, adopted, promulgated or issued, as applicable, subsequent to the Closing Date for all purposes herein.

4.11 Taxes. (a) Except as provided below in this Subsection 4.11 or as required by law, all payments made by the Borrower or the Agents under this Agreement and any Notes shall be made free and clear of, and without deduction or withholding for or on account of any Taxes; provided that if any Non-Excluded Taxes are required to be withheld from any amounts payable by the Borrower to any Agent or any Lender hereunder or under any Notes, the amounts so payable by the Borrower shall be increased to the extent necessary to yield to such Agent or such Lender (after payment of all Non-Excluded Taxes) interest or any such other amounts payable hereunder at the rates or in the amounts specified in this Agreement; provided, however, that the Borrower shall be entitled to deduct and withhold, and the Borrower shall not be required to indemnify for any Non-Excluded Taxes, and any such amounts payable by the Borrower to or for the account of any Agent or Lender, shall not be increased (x) if such Agent or Lender fails to comply with the requirements of clause (b) (including for the avoidance of doubt any such failure to comply with the requirements of clause (b) as a result of a Lender not being legally entitled to so comply), (c) or (d) of this Subsection 4.11 or with the requirements of Subsection 4.13, or (y) with respect to any Non-Excluded Taxes imposed in connection with the payment of any fees paid under this Agreement unless such Non-Excluded Taxes are imposed as a result of a Change in Law, or (z) with respect to any Non-Excluded Taxes imposed by the United States or any state or political subdivision thereof, unless such Non-Excluded Taxes are imposed as a result of a change in treaty, law or regulation that occurred after such Agent became an Agent hereunder or such Lender became a Lender hereunder (or, if such Agent or Lender is a non-U.S. intermediary or flow-through entity for U.S. federal income tax purposes, after the relevant beneficiary or member of such Agent or Lender became such a beneficiary or member, if later) (any such change, at such time, a "Change in Law"). Whenever any Non-Excluded Taxes are payable by the Borrower, as promptly as possible thereafter the Borrower shall send to the Administrative Agent for its own account or for the account of the respective Lender or Agent, as the case may be, a certified copy of an original official receipt received by the Borrower showing payment thereof. If the Borrower fails to pay any Non-Excluded Taxes when due to the appropriate Governmental Authority in accordance with applicable law or fails to remit to the Administrative Agent the required receipts or other required documentary evidence, the Borrower shall indemnify the Administrative Agent, the Lenders and the Agents for any incremental Taxes, interest or penalties that may become payable by the Administrative Agent or any Lender as a result of any such failure. The agreements in this Subsection 4.11 shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

(b) Each Agent and each Lender that is not a United States Person shall:

(i) (1) on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Agent or Lender, deliver to the Borrower and the Administrative Agent (A) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (certifying that it is a resident of the applicable country within the meaning of the income tax treaty between the United States and that country), or Form W-8ECI, or successor applicable form, as the case may be, in each case certifying that it is entitled to receive all payments under this Agreement and any Notes without deduction or withholding of any United States federal

income taxes, and (B) such other forms, documentation or certifications, as the case may be, certifying that it is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes;

(2) deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of any such form or certification provided in Subsection 4.11(b)(i)(1) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form or certificate previously delivered by it to the Borrower;

(3) [reserved]; and

(4) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (4) such Lender shall be entitled to consider the cost (to the extent unreimbursed by any Loan Party) which would be imposed on such Lender of complying with such request; or

(ii) in the case of any such Lender that is not a "bank" within the meaning of Section 881(c)(3)(A) of the Code and is claiming the so-called "portfolio interest exemption",

(1) [reserved];

(2) deliver to the Borrower on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Lender, with a copy to the Administrative Agent, (A) two certificates (any such certificate a "U.S. Tax Compliance Certificate") substantially in the form of Exhibit D-1 hereto to the effect that it is not (i) a bank within the meaning of Section 881(c)(3)(A) of the Code, (ii) a "10 percent shareholder" of the Borrower or any Parent Entity within the meaning of Section 881(c)(3)(B) of the Code or (iii) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and (B) two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or successor applicable form and (C) such other forms, documentation or certifications, as the case may be certifying that it is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes (and shall also deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of such form or certificate on or before the date it expires or becomes obsolete and after the occurrence of any event requiring a change in the most recently provided form or certificate; and

(3) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such Lender to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (3) such Lender shall be entitled to consider the cost (to the extent unreimbursed by the Borrower) which would be imposed on such Lender of complying with such request; or

(iii) in the case of any such Agent or Lender that is a non-U.S. intermediary or flow-through entity for U.S. federal income tax purposes,

(1) on or before the date of any payment by the Borrower under this Agreement or any Notes to, or for the account of, such Agent or Lender, deliver to the Borrower and the Administrative Agent two accurate and complete original signed copies of Internal Revenue Service Form W-8IMY and, if such Lender is treated as a partnership for U.S. federal income tax purposes and if any direct or indirect partner of such Lender is claiming the so-called "portfolio interest exemption", represent to the Borrower and the Administrative Agent that such Lender is not a bank within the meaning of Section 881(c)(3)(A) of the Code; and

(A) if applicable, with respect to each beneficial owner or partner of such Agent or Lender that is not claiming the so-called "portfolio interest exemption", also deliver to the Borrower and the Administrative Agent (I) two duly completed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E (certifying that such beneficial owner or partner is a resident of the applicable country within the meaning of the income tax treaty between the United States and that country), Form W-8ECI or Form W-9, or successor applicable form, as the case may be, in each case so that each such beneficial owner or partner is entitled to receive all payments under this Agreement and any Notes without deduction or withholding of any United States federal income taxes and (II) such other forms, documentation or certifications, as the case may be, certifying that each such beneficial owner or partner is entitled to an exemption from United States backup withholding tax with respect to all payments under this Agreement and any Notes; and

(B) if applicable, with respect to each beneficial owner or partner of such Lender that is claiming the so-called "portfolio interest exemption", (I) deliver to the Borrower and the Administrative Agent two U.S. Tax Compliance Certificates substantially in the form of Exhibit D-2 from each beneficial owner or partner to the effect that such beneficial owner or partner is not (1) a bank within the meaning of Section 881(c)(3)(A) of the Code, (2) a "10 percent shareholder" of the Borrower or any Parent Entity within the meaning of

Section 881(c)(3)(B) of the Code, or (3) a "controlled foreign corporation" described in Section 881(c)(3)(C) of the Code and two accurate and complete original signed copies of Internal Revenue Service Form W-8BEN or W-8BEN-E, or successor applicable form, from each such beneficial owner or partner, provided that if such Agent or Lender is a partnership, such Agent or Lender may provide a U.S. Tax Compliance Certificate substantially in the form of Exhibit D-3 on behalf of each such direct and indirect partner, and (II) also deliver to Borrower and the Administrative Agent such other forms, documentation or certifications, as the case may be, certifying that each such beneficial owner or partner is entitled to an exemption from United States backup withholding tax with respect to payments under this Agreement and any Notes;

(2) deliver, to the extent legally entitled to do so, to the Borrower and the Administrative Agent two further copies of any such forms, certificates or certifications referred to above on or before the date any such form, certificate or certification expires or becomes obsolete, or any beneficial owner or partner changes, and after the occurrence of any event requiring a change in the most recently provided form, certificate or certification; and

(3) deliver, to the extent legally entitled to do so, upon reasonable request by the Borrower, to the Borrower and the Administrative Agent such other forms as may be reasonably required in order to establish the legal entitlement of such beneficial owner or partner to an exemption from, or reduction of, withholding with respect to payments under this Agreement and any Notes, provided that in determining the reasonableness of a request under this clause (3) such Agent or Lender shall be entitled to consider the cost (to the extent unreimbursed by the Borrower) which would be imposed on such Agent or Lender (or beneficial owner or partner) of complying with such request;

unless in any such case there has been a Change in Law which renders all such forms inapplicable or which would prevent such Agent or such Lender (or such beneficial owner or partner) from duly completing and delivering any such form with respect to it and such Agent or such Lender so advises the Borrower and the Administrative Agent.

(c) Each Lender and each Agent, in each case that is a United States Person shall on or before the date of any payment by the Borrower under this Agreement or any Notes to such Lender or Agent, deliver to the Borrower and the Administrative Agent two duly completed copies of Internal Revenue Service Form W-9, or successor form, certifying that such Lender or Agent is a United States Person and that such Lender or Agent is entitled to complete exemption from United States backup withholding tax.

(d) Notwithstanding the foregoing, if the Administrative Agent is not a United States Person, on or before the date of any payment by the Borrower under this Agreement or any Notes to the Administrative Agent, the Administrative Agent shall:

(i) deliver to the Borrower (A) two duly completed copies of Internal Revenue Service Form W-8ECI, or successor applicable form, with respect to any amounts payable to the Administrative Agent for its own account, (B) two duly completed copies of Internal Revenue Service Form W-8IMY, or successor applicable form, with respect to any amounts payable to the Administrative Agent for the account of others, certifying that it is a "U.S. branch" and that the payments it receives for the account of others are not effectively connected with the conduct of its trade or business in the United States and that it is using such form as evidence of its agreement with the Borrower to be treated as a U.S. person with respect to such payments (and the Borrower and the Administrative Agent agree to so treat the Administrative Agent as a U.S. person with respect to such payments as contemplated by U.S. Treasury Regulation § 1.1441-1(b)(2)(iv)) or (C) such other forms or certifications as may be sufficient under applicable law to establish that the Administrative Agent is entitled to receive any payment by the Borrower under this Agreement or any Notes (whether for its own account or for the account of others) without deduction or withholding of any United States federal income taxes; and

(ii) deliver, to the extent legally entitled to do so, to the Borrower two further copies of any such form or certification provided in Subsection 4.11(d)(i) on or before the date that any such form or certification expires or becomes obsolete and after the occurrence of any event requiring a change in the most recent form or certificate previously delivered by it to the Borrower.

(e) If a payment made to a Lender under any 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, such Lender shall deliver to the Administrative Agent and the Borrower, at the time or times prescribed by law and at such time or times reasonably requested by the Administrative Agent or the Borrower, such documentation prescribed by applicable law and such additional documentation reasonably requested by the Administrative Agent or the Borrower as may be necessary for the Administrative Agent and the Borrower to comply with their respective obligations (including any applicable reporting requirements) under FATCA, to determine that such Lender has complied with such Lender's obligations under FATCA or to determine the amount to deduct and withhold from such payment. Solely for purposes of this Subsection 4.11(e), FATCA shall include any amendments made to FATCA after the date of this Agreement. For the avoidance of doubt, the Borrower and the Administrative Agent shall be permitted to withhold any Taxes imposed by FATCA.

4.12 Indemnity. The Borrower agrees to indemnify each Lender in respect of Extensions of Credit made, or requested to be made, to the Borrower, and to hold each such Lender harmless from any loss or expense which such Lender may sustain or incur (other than through such Lender's gross negligence or willful misconduct as determined by a court of competent jurisdiction in a final and nonappealable decision) as a consequence of (a) default by the Borrower in making a borrowing of, conversion into or continuation of Eurodollar Loans after the Borrower has given a notice requesting the same in accordance with the provisions of this Agreement, (b) default by the Borrower in making any prepayment or conversion of Eurodollar Loans after the Borrower has given a notice thereof in accordance with the provisions of this Agreement, (c) the making of a payment

or prepayment of Eurodollar Loans or the continuation or conversion of Eurodollar Loans on a day which is not the last day of an Interest Period with respect thereto, (d) the revocation of a redemption notice in respect of Eurodollar Loans delivered by the Borrower in accordance with the provisions of Subsection 4.4(b) or (e) any assignment of a Eurodollar Loan on a day other than the last day of the Interest Period therefor as a result of a request by the Borrower pursuant to Subsections 2.8(e), 4.13(d) and 11.1(g). Such indemnification may include an amount equal to the excess, if any, of (i) the amount of interest which would have accrued on the amount so prepaid, or converted, or not so borrowed, converted or continued, for the period from the date of such prepayment or conversion or of such failure to borrow, convert or continue to the last day of the applicable Interest Period (or, in the case of a failure to borrow, convert or continue, the Interest Period that would have commenced on the date of such failure) in each case at the applicable rate of interest for such Eurodollar Loans provided for herein (excluding, however, the Applicable Margin included therein, if any) over (ii) the amount of interest (as reasonably determined by such Lender) which would have accrued to such Lender on such amount by placing such amount on deposit for a comparable period with leading banks in the interbank Eurodollar market plus (iii) any fees payable to terminate such deposits. The Borrower shall also pay any customary administrative fees charged by such Lender in connection with the foregoing. If any Lender becomes entitled to claim any amounts under the indemnity contained in this Subsection 4.12, it shall provide prompt notice thereof to the Borrower, through the Administrative Agent, certifying (x) that one of the events described in clauses (a), (b), (c), (d) or (e) above has occurred and describing in reasonable detail the nature of such event, (y) as to the loss or expense sustained or incurred by such Lender as a consequence thereof and (z) as to the amount for which such Lender seeks indemnification hereunder and a reasonably detailed explanation of the calculation thereof. Such a certificate as to any indemnification pursuant to this Subsection 4.12 submitted by such Lender, through the Administrative Agent, to the Borrower shall be conclusive in the absence of manifest error. The Borrower shall pay such Lender the amount shown as due on any such certificate within five Business Days after receipt thereof. This covenant shall survive the termination of this Agreement and the payment of the Term Loans and all other amounts payable hereunder.

4.13 Certain Rules Relating to the Payment of Additional Amounts. (a) Upon the request, and at the expense of the Borrower, each Lender and Agent to which the Borrower is required to pay any additional amount pursuant to Subsection 4.10 or 4.11, and any Participant in respect of whose participation such payment is required, shall reasonably afford the Borrower the opportunity to contest, and reasonably cooperate with the Borrower in contesting, the imposition of any Non-Excluded Tax giving rise to such payment; provided that (i) such Lender or Agent shall not be required to afford the Borrower the opportunity to so contest unless the Borrower shall have confirmed in writing to such Lender or Agent its obligation to pay such amounts pursuant to this Agreement and (ii) the Borrower shall reimburse such Lender or Agent for its reasonable attorneys' and accountants' fees and disbursements incurred in so cooperating with the Borrower in contesting the imposition of such Non-Excluded Tax; provided, however, that notwithstanding the foregoing no Lender or Agent shall be required to afford the Borrower the opportunity to contest, or cooperate with the Borrower in contesting, the imposition of

any Non-Excluded Taxes, if such Lender or Agent in its sole discretion in good faith determines that to do so would have an adverse effect on it.

(b) If a Lender changes its applicable lending office (other than (i) pursuant to clause (c) below or (ii) after an Event of Default under Subsection 9.1(a) or (f) has occurred and is continuing) and the effect of such change, as of the date of such change, would be to cause the Borrower to become obligated to pay any additional amount under Subsection 4.10 or 4.11, the Borrower shall not be obligated to pay such additional amount.

(c) If a condition or an event occurs which would, or would upon the passage of time or giving of notice, result in the payment of any additional amount to any Lender or Agent by the Borrower pursuant to Subsection 4.10 or 4.11 or result in Affected Loans or commitments to make Affected Loans being automatically converted to ABR Loans or commitments to make ABR Loans, as the case may be, pursuant to Subsection 4.9, such Lender or Agent shall promptly notify the Borrower and the Administrative Agent and shall take such steps as may reasonably be available to it to mitigate the effects of such condition or event (which shall include efforts to rebook the Term Loans held by such Lender at another lending office, or through another branch or an affiliate, of such Lender); provided that such Lender or Agent shall not be required to take any step that, in its reasonable judgment, would be materially disadvantageous to its business or operations or would require it to incur additional costs (unless the Borrower agrees to reimburse such Lender or Agent for the reasonable incremental out-of-pocket costs thereof).

(d) If the Borrower shall become obligated to pay additional amounts pursuant to Subsection 4.10 or 4.11 and any affected Lender shall not have promptly taken steps necessary to avoid the need for payments under Subsection 4.10 or 4.11 or if Affected Loans or commitments to make Affected Loans are automatically converted to ABR Loans or commitments to make ABR Loans, as the case may be, under Subsection 4.9 and any affected Lender shall not have promptly taken steps necessary to avoid the need for such conversion under Subsection 4.9, the Borrower shall have the right, for so long as such obligation remains, (i) with the assistance of the Administrative Agent to seek one or more substitute Lenders reasonably satisfactory to the Administrative Agent and the Borrower to purchase the affected Term Loan, in whole or in part, at an aggregate price no less than such Term Loan's principal amount plus accrued interest, and assume the affected obligations under this Agreement, or (ii) so long as no Event of Default under Subsection 9.1(a) or (f) then exists or will exist immediately after giving effect to the respective prepayment, upon notice to the Administrative Agent to prepay the affected Term Loan, in whole or in part, subject to Subsection 4.12, without premium or penalty. In the case of the substitution of a Lender, then, the Borrower, the Administrative Agent, the affected Lender, and any substitute Lender shall execute and deliver an appropriately completed Assignment and Acceptance pursuant to Subsection 11.6(b) to effect the assignment of rights to, and the assumption of obligations by, the substitute Lender; provided that any fees required to be paid by Subsection 11.6(b) in connection with such assignment shall be paid by the Borrower or the substitute Lender. In the case of a prepayment of an affected Term Loan, the amount specified in the notice shall be due and payable on the date specified therein, together with any accrued interest to such date on the amount prepaid. In the case of each of the substitution of a Lender and of the prepayment of an affected Term Loan, the Borrower shall first pay the affected Lender any additional amounts owing under Subsections 4.10 and 4.11 (as well as any commitment fees

and other amounts then due and owing to such Lender, including any amounts under this Subsection 4.13) prior to such substitution or prepayment. In the case of the substitution of a Lender pursuant to this Subsection 4.13(d), if the Lender being replaced does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the assignee Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (b) the date as of which all obligations of the Borrower owing to such replaced Lender relating to the Term Loans and participations so assigned shall be paid in full by the assignee Lender and/or the Borrower to such Lender being replaced, then the Lender being replaced shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Lender.

(e) If any Agent or any Lender receives a refund directly attributable to Taxes for which the Borrower has made additional payments pursuant to Subsection 4.10(a) or 4.11(a), such Agent or such Lender, as the case may be, shall promptly pay such refund (together with any interest with respect thereto received from the relevant taxing authority, but net of any reasonable cost incurred in connection therewith) to the Borrower; provided, however, that the Borrower agrees promptly to return such refund (together with any interest with respect thereto due to the relevant taxing authority) (free of all Non-Excluded Taxes) to such Agent or the applicable Lender, as the case may be, upon receipt of a notice that such refund is required to be repaid to the relevant taxing authority.

(f) The obligations of any Agent, Lender or Participant under this Subsection 4.13 shall survive the termination of this Agreement and the payment of the Term Loans and all amounts payable hereunder.

SECTION 5

Representations and Warranties

To induce the Administrative Agent and each Lender to make the Extensions of Credit requested to be made by it on the Closing Date, the Borrower with respect to itself and its Restricted Subsidiaries, hereby represents and warrants, on the Closing Date, after giving effect to the Transactions, to the Administrative Agent and each Lender that:

5.1 Financial Condition. (a) (i) The audited consolidated balance sheets of the Borrower and its Subsidiaries as of December 31, 2013 and the related consolidated statements of operations, equity and cash flows for the Fiscal Year ended December 31, 2013, reported on by and accompanied by unqualified reports from KPMG LLP, and (ii) the unaudited consolidated balance sheets of the Borrower and its Subsidiaries and the related consolidated statements of operations, equity and cash flows for the fiscal quarter ended June 30, 2015 present fairly, in all material respects, the consolidated financial condition as at such dates, and the consolidated statements of operations and consolidated cash flows for the respective periods then ended, of the Borrower and its Subsidiaries. All such financial statements, including the related

schedules and notes thereto, have been prepared in accordance with GAAP consistently applied throughout the periods covered thereby (except as approved by a Responsible Officer, and disclosed in any such schedules and notes). During the period from December 31, 2013 to and including the Closing Date, there has been no sale, transfer or other disposition by the Borrower and its Subsidiaries of any material part of its business or property and no purchase or other acquisition by the Borrower and its Subsidiaries of any business or property (including any Capital Stock of any other Person) which in either case is material in relation to the consolidated financial condition of the Borrower and its Subsidiaries, taken as a whole, which is not reflected in the foregoing financial statements or in the notes thereto or has not otherwise been disclosed in writing to the Lenders on or prior to the Closing Date.

(b) As of the Closing Date, except as set forth in the financial statements referred to in Subsection 5.1(a), there are no liabilities of any Loan Party of any kind, whether accrued, contingent, absolute, determined, determinable or otherwise, which would reasonably be expected to result in a Material Adverse Effect.

(c) After giving effect to (i) the Transactions and (ii) the payment and accrual of all transaction costs in connection with the foregoing, the Borrower, together with its Subsidiaries on a consolidated basis, is Solvent.

5.2 No Change; Solvent. Since the Plan Effective Date, there has been no development or event relating to or affecting any Loan Party which has had or would be reasonably expected to have a Material Adverse Effect (after giving effect to (i) the consummation of the Transactions, (ii) the making of the Extensions of Credit to be made on the Closing Date and the application of the proceeds thereof as contemplated hereby and (iii) the payment of actual or estimated fees, expenses, financing costs and tax payments related to the Transactions contemplated hereby. Since the Confirmation Date, except as otherwise permitted under this Agreement, no dividends or other distributions have been declared, paid or made upon the Capital Stock of the Borrower, nor has any of the Capital Stock of the Borrower been redeemed, retired, purchased or otherwise acquired for value by the Borrower or any of its Subsidiaries. As of the Plan Effective Date, after giving effect to the consummation of the Transactions to be consummated on the Closing Date, the Borrower, together with its Subsidiaries on a consolidated basis, is Solvent.

5.3 Corporate Existence; Compliance with Law. Each of the Loan Parties (a) is duly organized, validly existing and in good standing under the laws of the jurisdiction of its incorporation or formation, (b) has the legal right to own and operate its property, to lease the property it operates as lessee and to conduct the business in which it is currently engaged, except to the extent that the failure to have such legal right would not be reasonably expected to have a Material Adverse Effect, (c) is duly qualified as a foreign corporation or limited liability company and in good standing under the laws of each jurisdiction where its ownership, lease or operation of property or the conduct of its business requires such qualification, other than in such jurisdictions where the failure to be so qualified and in good standing would not be reasonably expected to have a Material Adverse Effect and (d) is in compliance with all Requirements of Law, except to the extent

that the failure to comply therewith would not, in the aggregate, be reasonably expected to have a Material Adverse Effect.

5.4 Corporate Power; Authorization; Enforceable Obligations. Each Loan Party has the corporate or other organizational power and authority, and the legal right, to make, deliver and perform the Loan Documents to which it is a party and, in the case of the Borrower, to obtain Extensions of Credit hereunder, and each such Loan Party has taken all necessary corporate or other organizational action to authorize the execution, delivery and performance of the Loan Documents to which it is a party and, in the case of the Borrower, to authorize the Extensions of Credit to it, if any, on the terms and conditions of this Agreement and any Notes. No consent or authorization of, filing with, notice to or other similar act by or in respect of, any Governmental Authority or any other Person is required to be obtained or made by or on behalf of any Loan Party in connection with the execution, delivery, performance, validity or enforceability of the Loan Documents to which it is a party or, in the case of the Borrower, with the Extensions of Credit to it, if any, hereunder, except for (a) consents, authorizations, notices and filings that have been obtained or made prior to the Closing Date, (b) filings to perfect the Liens created by the Security Documents, and (c) consents, authorizations, notices and filings which the failure to obtain or make would not reasonably be expected to have a Material Adverse Effect. This Agreement has been duly executed and delivered by the Borrower, and each other Loan Document to which any Loan Party is a party will be duly executed and delivered on behalf of such Loan Party. This Agreement constitutes a legal, valid and binding obligation of the Borrower and each other Loan Document to which any Loan Party is a party when executed and delivered will constitute a legal, valid and binding obligation of such Loan Party, enforceable against such Loan Party in accordance with its terms, in each case except as enforceability may be limited by applicable domestic or foreign bankruptcy, insolvency, reorganization, moratorium or similar laws affecting the enforcement of creditors' rights generally and by general equitable principles (whether enforcement is sought by proceedings in equity or at law).

5.5 No Legal Bar. The execution, delivery and performance of the Loan Documents by any of the Loan Parties, the Extensions of Credit hereunder and the use of the proceeds thereof (a) will not violate any Requirement of Law or Contractual Obligation of such Loan Party in any respect that would reasonably be expected to have a Material Adverse Effect, (b) will not result in, or require the creation or imposition of any Lien (other than Liens securing the Term Loan Facility Obligations or otherwise permitted hereby) on any of its properties or revenues pursuant to any such Requirement of Law or Contractual Obligation and (c) will not violate any provision of the Organizational Documents of such Loan Party or any of the Restricted Subsidiaries in any respect.

5.6 No Material Litigation. No litigation, investigation or proceeding of or before any arbitrator or Governmental Authority is pending or, to the knowledge of the Borrower, threatened by or against the Borrower or any of its Restricted Subsidiaries or against any of their respective properties or revenues, (a) except as described on Schedule 5.6, which is so pending or threatened at any time on or prior to the Closing Date and relates to any of the Loan Documents or any of the transactions contemplated hereby or thereby or (b) which would be reasonably expected to have a Material Adverse Effect.

5.7 No Default. Neither the Borrower nor any of its Restricted Subsidiaries is in default under or with respect to any of its Contractual Obligations in any respect which would be reasonably expected to have a Material Adverse Effect. Since the Closing Date, no Default or Event of Default has occurred and is continuing.

5.8 Ownership of Property; Liens. Each of the Borrower and its Restricted Subsidiaries has good title in fee simple to, or a valid leasehold interest in, all its material real property, and good title to, or a valid leasehold interest in, all its other material property, except those for which the failure to have such good title or such leasehold interest would not be reasonably expected to have a Material Adverse Effect, and none of such real or other property is subject to any Lien, except for Permitted Liens. Schedule 5.8 sets forth all Mortgaged Fee Properties as of the Closing Date.

5.9 Intellectual Property. The Borrower and each of its Restricted Subsidiaries owns, or has the legal right to use, all United States and foreign patents, patent applications, trademarks, trademark applications, trade names, copyrights, technology, know-how and processes necessary for each of them to conduct its business as currently conducted (the "Intellectual Property") except for those the failure to own or have such legal right to use would not be reasonably expected to have a Material Adverse Effect. Except as provided on Schedule 5.9, no claim has been asserted and is pending by any Person against the Borrower or any of its Restricted Subsidiaries challenging or questioning the use of any such Intellectual Property or the validity or effectiveness of any such Intellectual Property, nor does the Borrower know of any such claim, and, to the knowledge of the Borrower, the use of such Intellectual Property by the Borrower and its Restricted Subsidiaries does not infringe on the rights of any Person, except for such claims and infringements which in the aggregate, would not be reasonably expected to have a Material Adverse Effect.

5.10 Taxes. (1) Each of the Borrower and its Restricted Subsidiaries has filed or caused to be filed all material tax returns which are required to be filed by it and has paid (a) all Taxes shown to be due and payable on such returns and (b) all Taxes shown to be due and payable on any assessments of which it has received notice made against it or any of its property (including the Mortgaged Fee Properties) and all other Taxes imposed on it or any of its property by any Governmental Authority; and (2) no Tax Liens have been filed (except for Liens for Taxes not yet due and payable), and no claim is being asserted in writing, with respect to any such Taxes (in each case other than in respect of any such (i) Taxes with respect to which the failure to pay, in the aggregate, would not have a Material Adverse Effect or (ii) Taxes the amount or validity of which are currently being contested in good faith by appropriate proceedings diligently conducted and with respect to which reserves in conformity with GAAP have been provided on the books of the Borrower or its Restricted Subsidiaries, as the case may be).

5.11 Federal Regulations. No part of the proceeds of any Extensions of Credit will be used for any purpose which violates the provisions of the Regulations of the Board, including without limitation, Regulation T, Regulation U or Regulation X of the Board. If requested by any Lender or the Administrative Agent, the Borrower will furnish to the Administrative Agent and each Lender a statement to the foregoing effect in

conformity with the requirements of FR Form G-3 or FR Form U-1, referred to in said Regulation U.

5.12 ERISA. (a) During the five year period prior to each date as of which this representation is made, or deemed made, with respect to any Plan, none of the following events or conditions, either individually or in the aggregate, has resulted or is reasonably likely to result in a Material Adverse Effect: (i) a Reportable Event; (ii) a failure to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA); (iii) any noncompliance with the applicable provisions of ERISA or the Code; (iv) a termination of a Single Employer Plan (other than a standard termination pursuant to Section 4041(b) of ERISA); (v) a Lien on the property of the Borrower or its Restricted Subsidiaries in favor of the PBGC or a Plan; (vi) a complete or partial withdrawal from any Multiemployer Plan by the Borrower or any Commonly Controlled Entity; (vii) the Reorganization or Insolvency of any Multiemployer Plan; or (viii) any transactions that resulted or could reasonably be expected to result in any liability to the Borrower or any Commonly Controlled Entity under Section 4069 of ERISA or Section 4212(c) of ERISA.

(b) With respect to any Foreign Plan, none of the following events or conditions exists and is continuing that, either individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect: (i) substantial non-compliance with its terms and with the requirements of any and all applicable laws, statutes, rules, regulations and orders; (ii) failure to be maintained, where required, in good standing with applicable regulatory authorities; (iii) any obligation of the Borrower or its Restricted Subsidiaries in connection with the termination or partial termination of, or withdrawal from, any Foreign Plan; (iv) any Lien on the property of the Borrower or its Restricted Subsidiaries in favor of a Governmental Authority as a result of any action or inaction regarding a Foreign Plan; (v) for each Foreign Plan which is a funded or insured plan, failure to be funded or insured on an ongoing basis to the extent required by applicable non-U.S. law (using actuarial methods and assumptions which are consistent with the valuations last filed with the applicable Governmental Authorities); (vi) any facts that, to the best knowledge of the Borrower or any of its Restricted Subsidiaries, exist that would reasonably be expected to give rise to a dispute and any pending or threatened disputes that, to the best knowledge of the Borrower or any of its Restricted Subsidiaries, would reasonably be expected to result in a material liability to the Borrower or any of its Restricted Subsidiaries concerning the assets of any Foreign Plan (other than individual claims for the payment of benefits); and (vii) failure to make all contributions in a timely manner to the extent required by applicable non-U.S. law.

5.13 Collateral. Upon execution and delivery thereof by the parties thereto, the Guarantee and Collateral Agreement and the Mortgages (if any) will be effective to create (to the extent described therein) in favor of the Collateral Agent for the benefit of the Secured Parties, a legal, valid and enforceable security interest in or liens on the Collateral described therein, except as to enforcement, as may be limited by applicable domestic or foreign bankruptcy, insolvency, fraudulent conveyance, reorganization, moratorium and other similar laws relating to or affecting creditors' rights generally, general equitable principles (whether considered in a proceeding in equity or at law) and an implied covenant of good faith and fair dealing. When (a) the actions specified in

[Schedule 3] to the Guarantee and Collateral Agreement have been duly taken, (b) all applicable Instruments, Chattel Paper and Documents (each as described therein) a security interest in which is perfected by possession have been delivered to, and/or are in the continued possession of, the Collateral Agent (it being understood and agreed that any such Collateral that has been delivered to and/or is in the continued possession of the ABL Agent or Senior Term Agent shall, pursuant to the Senior Notes Intercreditor Agreement, be deemed delivered to and/or in the continued possession of the Collateral Agent for all purposes hereunder), (c) all Deposit Accounts and Pledged Stock (each as defined in the Guarantee and Collateral Agreement) a security interest in which is required to be or is perfected by "control" (as described in the Uniform Commercial Code as in effect in each applicable jurisdiction (in the case of Deposit Accounts) and the State of New York (in the case of Pledged Stock) from time to time) are under the "control" of the Collateral Agent or the Administrative Agent, as agent for the Collateral Agent and as directed by the Collateral Agent, and (d) the Mortgages (if any) have been duly recorded in the proper recorders' offices or appropriate public records and the mortgage recording fees and taxes in respect thereof, if any, are paid and compliance is otherwise had with the formal requirements of state or local law applicable to the recording of real property mortgages generally, the security interests and liens granted pursuant thereto shall constitute (to the extent described therein and with respect to the Mortgages, only as relates to the real property security interests and liens granted pursuant thereto) a perfected security interest in (to the extent intended to be created thereby and required to be perfected under the Loan Documents), all right, title and interest of each pledgor or mortgagor (as applicable) party thereto in the Collateral described therein (excluding Commercial Tort Claims, as defined in the Guarantee and Collateral Agreement, other than such Commercial Tort Claims set forth on Schedule 6 thereto (if any)) with respect to such pledgor or mortgagor (as applicable). Notwithstanding any other provision of this Agreement, capitalized terms that are used in this Subsection 5.13 and not defined in this Agreement are so used as defined in the applicable Security Document.

5.14 Investment Company Act; Other Regulations. The Borrower is not an "investment company", or a company "controlled" by an "investment company", within the meaning of the Investment Company Act. The Borrower is not subject to regulation under any federal or state statute or regulation (other than Regulation X of the Board) which limits its ability to incur Indebtedness as contemplated hereby.

5.15 Subsidiaries. Schedule 5.15 sets forth all the Subsidiaries of the Borrower at the Closing Date, the jurisdiction of their organization and the direct or indirect ownership interest of the Borrower therein.

5.16 Purpose of Loans. The proceeds of the Term Loans shall be used by the Borrower (i) to repay in full any outstanding obligations under that certain Debtor-In-Possession Credit Agreement, dated as of June 8, 2015, among the Borrower, the Administrative Agent, the Collateral Agent and the lenders party thereto, (ii) to fund certain payments required to be made by the Loan Parties under the Plan of Reorganization and (iii) for working capital and general corporate purposes of the Loan Parties. For the avoidance of doubt, once repaid, the Term Loans cannot be reborrowed.

5.17 Environmental Matters. Other than as disclosed on Schedule 5.17 or exceptions to any of the following that would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect:

(a) The Borrower and its Restricted Subsidiaries: (i) are, and within the period of all applicable statutes of limitation have been, in compliance with all applicable Environmental Laws; (ii) hold all Environmental Permits (each of which is in full force and effect) required for any of their current operations or for any property owned, leased, or otherwise operated by any of them and reasonably expect to timely obtain without material expense all such Environmental Permits required for planned operations; (iii) are, and within the period of all applicable statutes of limitation have been, in compliance with all of their Environmental Permits; and (iv) believe they will be able to maintain compliance with Environmental Laws, including any reasonably foreseeable future requirements thereof.

(b) Materials of Environmental Concern have not been transported, disposed of, emitted, discharged, or otherwise released or threatened to be released, to or at any real property presently or formerly owned, leased or operated by the Borrower or any of its Restricted Subsidiaries or at any other location, which would reasonably be expected to (i) give rise to liability or other Environmental Costs of the Borrower or any of its Restricted Subsidiaries under any applicable Environmental Law, or (ii) interfere with the planned or continued operations of the Borrower and its Restricted Subsidiaries, or (iii) impair the fair saleable value of any real property owned by the Borrower or any of its Restricted Subsidiaries that is part of the Collateral.

(c) There is no judicial, administrative, or arbitral proceeding (including any notice of violation or alleged violation) under any Environmental Law to which the Borrower or any of its Restricted Subsidiaries is, or to the knowledge of the Borrower or any of its Restricted Subsidiaries is reasonably likely to be, named as a party that is pending or, to the knowledge of the Borrower or any of its Restricted Subsidiaries, threatened.

(d) Neither the Borrower nor any of its Restricted Subsidiaries has received any written request for information, or been notified that it is a potentially responsible party, under the federal Comprehensive Environmental Response, Compensation, and Liability Act or any similar Environmental Law, or received any other written request for information from any Governmental Authority with respect to any Materials of Environmental Concern.

(e) Neither the Borrower nor any of its Restricted Subsidiaries has entered into or agreed to any consent decree, order, or settlement or other agreement, nor is subject to any judgment, decree, or order or other agreement, in any judicial, administrative, arbitral, or other forum, relating to compliance with or liability under any Environmental Law.

5.18 No Material Misstatements. The written information reports, financial statements, exhibits and schedules furnished by or on behalf of the Borrower to

the Administrative Agent and the Lenders on or prior to the Closing Date in connection with the negotiation of any Loan Document or included therein or delivered pursuant thereto, taken as a whole, did not contain as of the Closing Date any material misstatement of fact and did not omit to state as of the Closing Date any material fact necessary to make the statements therein, in the light of the circumstances under which they were made, not materially misleading in their presentation of the Borrower and its Restricted Subsidiaries taken as a whole. It is understood that (a) no representation or warranty is made concerning the forecasts, estimates, pro forma information, projections and statements as to anticipated future performance or conditions, and the assumptions on which they were based or concerning any information of a general economic nature or general information about Borrower's and its Subsidiaries' industry, contained in any such information, reports, financial statements, exhibits or schedules, except that, in the case of such forecasts, estimates, pro forma information, projections and statements, as of the date such forecasts, estimates, pro forma information, projections and statements were generated, (i) such forecasts, estimates, pro forma information, projections and statements were based on the good faith assumptions of the management of the Borrower and (ii) such assumptions were believed by such management to be reasonable and (b) such forecasts, estimates, pro forma information and statements, and the assumptions on which they were based, may or may not prove to be correct.

5.19 Labor Matters. There are no strikes pending or, to the knowledge of the Borrower, reasonably expected to be commenced against the Borrower or any of its Restricted Subsidiaries which, individually or in the aggregate, would reasonably be expected to have a Material Adverse Effect. The hours worked and payments made to employees of the Borrower and each of its Restricted Subsidiaries have not been in violation of any applicable laws, rules or regulations, except where such violations would not reasonably be expected to have a Material Adverse Effect.

5.20 Insurance. Schedule 5.20 sets forth a complete and correct listing as of the Closing Date of all insurance that is (a) maintained by the Loan Parties and (b) material to the business and operations of the Borrower and its Restricted Subsidiaries taken as a whole, with the amounts insured (and any deductibles) set forth therein.

5.21 Sanctions; Anti-Corruption Laws. None of Loan Parties or any of their Subsidiaries or, to the knowledge of any Loan Party, any of their respective directors, officers, employees or agents, (a) is an individual or entity that is, or is owned or controlled by any individual or entity that is, (i) currently the subject or target of any Sanctions, (ii) a Sanctioned Person or (iii) located, organized or resident in a Sanctioned Country, (b) owns any of the Capital Stock of any Sanctioned Person, or (c) derives any of its operating income from investments in, or transactions with Sanctioned Persons, in each case, that would constitute a violation of applicable Laws. The Loan Parties and their Subsidiaries have conducted their businesses in compliance in all material respects with the United States Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010, and other similar and applicable anti-corruption legislation or laws in other jurisdictions and have instituted and maintained policies and procedures designed to promote and achieve compliance with such laws.

SECTION 6

Conditions Precedent

6.1 Conditions to Initial Extension of Credit. This Agreement, including the agreement of each Lender to make the initial Extension of Credit requested to be made by it, shall become effective on the date on which the following conditions precedent shall have been satisfied or waived:

(a) Loan Documents. The Administrative Agent shall have received the following Loan Documents, executed and delivered as required below:

(i) this Agreement, executed and delivered by a duly authorized officer of the Borrower;

(ii) the Guarantee and Collateral Agreement, executed and delivered by a duly authorized officer of the Borrower and each Wholly Owned Subsidiary that is a Domestic Subsidiary (other than any Excluded Subsidiary) of the Borrower, and an Acknowledgement and Consent in the form attached to the Guarantee and Collateral Agreement, executed and delivered by each Issuer (as defined therein), if any, that is not a Loan Party;

(iii) the Perfection Certificate;

(iv) Control Agreements with respect deposit accounts and securities accounts of the Loan Parties;

(v) the Subordinated Notes Intercreditor Agreement, duly executed and delivered by the parties thereto and acknowledged by each Loan Party;

(vi) the Encana Intercreditor Agreement, duly executed and delivered by the parties thereto and acknowledged by each Loan Party; and

(vii) the Intercompany Subordination Agreement.

(b) Plan of Reorganization. (i) The Administrative Agent shall have received copies of the Confirmation Order (as defined below), and all Reorganization Documents, which documents shall be on terms and conditions reasonably satisfactory to the Administrative Agent and no amendment, modification, supplement or waiver shall have been made to any or all of the Confirmation Order and the Reorganization Documents, in each case, without the prior written consent of the Administrative Agent, that, in the reasonable judgment of the Administrative Agent, is adverse to the rights or interests of any or all of the Administrative Agent or the Lenders, (ii) the Bankruptcy Court shall have entered an order, in form and substance reasonably satisfactory to the Administrative Agent (the "Confirmation Order"), confirming the Plan of Reorganization and approving the solicitation procedures related to the Plan of Reorganization, (iii) the Plan Effective Date shall have occurred, and all conditions precedent to the effectiveness

of the Plan shall have been satisfied or waived (with the prior consent of the Administrative Agent if the Administrative Agent determines such waiver is adverse to the Lenders) and (iv) the transactions contemplated by the Plan of Reorganization shall have been consummated on the Closing Date and substantially contemporaneously with the initial funding of the Term Loans hereunder.

(c) ABL Facility. The Administrative Agent shall have received fully executed copies of the ABL Credit Agreement and any other ABL Facility Documents reasonably requested by the Administrative Agent, and all conditions precedent thereunder to the effectiveness of such agreements shall have been satisfied or shall be satisfied substantially contemporaneously with the initial funding of the Term Loans hereunder.

(d) Senior Term Debt. The Administrative Agent shall have received fully executed copies of the Senior Term Debt Credit Agreement and any other Senior Term Debt Loan Document reasonably requested by the Administrative Agent (acting at the direction of the Required Lenders), and all conditions precedent thereunder to the effectiveness of such agreements shall have been satisfied or shall be satisfied substantially contemporaneously with the closing of this Agreement.

(e) Outstanding Indebtedness. After giving effect to the consummation of the Transactions, the Borrower and its Subsidiaries shall have no outstanding Indebtedness for borrowed money, held by third parties, except for indebtedness incurred under the Facility, Indebtedness incurred under the ABL Facility, the Senior Term Debt, Indebtedness under the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements, Indebtedness that has been redeemed, released, defeased or otherwise discharged (or irrevocable notice for redemption thereof has been given) and any Existing Indebtedness and any Existing Capitalized Lease Obligations. Any Indebtedness to be refinanced shall have been repaid, defeased or otherwise discharged (or irrevocable notice for redemption thereof has been given) substantially concurrently with or prior to the satisfaction of the other conditions precedent set forth in this Subsection 6.1. The ABL Credit Agreement and the Senior Term Debt Credit Agreement shall be in full force and effect on and after giving effect to the Transactions on the Closing Date. The Administrative Agent shall have received fully executed copies of the documentation with respect to Indebtedness under the Tax Restructuring Agreements and the Trade Payable Restructuring Agreement.

(f) [Reserved].

(g) Legal Opinion. The Administrative Agent shall have received an executed legal opinion of (i) Debevoise & Plimpton LLP, counsel to the Borrower and the other Loan Parties and (ii) Young Conaway Stargatt & Taylor, special Delaware counsel to the Borrower and the other Loan Parties, in each case in form and substance satisfactory to the Administrative Agent (acting at the direction of the Required Lenders).

(h) Officer's Certificate. The Administrative Agent shall have received a certificate from the Borrower, dated the Closing Date, substantially in the form of Exhibit G hereto, with appropriate insertions and attachments.

(i) Perfected Liens. The Collateral Agent shall have obtained a valid security interest in the Collateral covered by the Guarantee and Collateral Agreement (to the extent and with the priority contemplated therein and in the Subordinated Notes Intercreditor Agreement); and all documents, instruments, filings, recordations and searches reasonably necessary in connection with the perfection and, in the case of the filings with the United States Patent and Trademark Office and the United States Copyright Office, protection of such security interests shall have been executed and delivered or made, or shall be delivered or made substantially concurrently with the initial funding of the Initial Term Loans or, in the case of UCC filings, written authorization to make such UCC filings shall have been delivered to the Collateral Agent, and none of such Collateral shall be subject to any other pledges, security interests or mortgages except for Permitted Liens or pledges, security interests or mortgages to be released on the Closing Date; provided that with respect to any such Collateral the security interest in which may not be perfected by filing of a UCC financing statement or by possession of Capital Stock of Domestic Subsidiaries, if perfection of the Collateral Agent's security interest in such Collateral may not be accomplished on or before the Closing Date after the applicable Loan Party's commercially reasonable efforts to do so, then delivery of documents and instruments for perfection of such security interest shall not constitute a condition precedent to the initial borrowings hereunder if the applicable Loan Party agrees to deliver or cause to be delivered such documents and instruments, and take or cause to be taken such other actions as may be reasonably necessary to perfect such security interests in accordance with Subsections 7.13 and 7.14 and otherwise pursuant to arrangements to be mutually agreed by the applicable Loan Party and the Administrative Agent acting reasonably, but in no event later than the 30th day after the Closing Date (unless otherwise agreed by the Administrative Agent acting at the direction of the Required Lenders).

(j) Pledged Stock; Stock Powers. The Senior Term Agent shall have received the certificates, if any, representing the Pledged Stock under (and as defined in) the Guarantee and Collateral Agreement, together with an undated stock power for each such certificate executed in blank by a duly authorized officer of the pledgor thereof.

(k) Mortgages. The Collateral Agent shall have received a fully executed Mortgage covering the real property identified to be mortgaged on Schedule 5.8, in form suitable for filing or recording in all filing or recording offices that the Administrative Agent may reasonably deem necessary or desirable in order to create a valid first and subsisting Lien on the property described therein in favor of the Administrative Agent for the benefit of the Secured Parties and evidence that all documentary, stamp, intangible, filing and recording taxes and fees have been paid or have otherwise been provided for in a manner reasonably satisfactory to the Collateral Agent, together with such UCC-1 financing statements or similar notices as the Collateral Agent shall reasonably deem appropriate with respect to such Mortgaged Fee Property, together with:

(i) evidence reasonably acceptable to the Collateral Agent that none of the improvements on any Mortgaged Fee Properties are located within any area designated by the Director of the Federal Emergency Management Agency as a "special flood hazard" area or if any improvements on the Mortgaged Fee Properties are located within a "special flood hazard" area, evidence of Borrower's receipt of notice from the Collateral Agent thereof and of a flood insurance policy as required by Subsection 7.5(b)(i) (if such insurance is required by applicable Law); and

(ii) evidence that all other action the Administrative Agent (acting at the direction of the Required Lenders) may deem necessary or advisable in order to create valid first and subsisting Liens on the property described in the Mortgages has been taken.

(l) [Reserved].

(m) Secretary's Certificate. The Administrative Agent shall have received a certificate from each Loan Party, dated the Closing Date, substantially in the form of Exhibit F hereto, with appropriate insertions and attachments reasonably satisfactory in form and substance to the Administrative Agent (acting at the direction of the Required Lenders), executed by a Responsible Officer and the Secretary or any Assistant Secretary or other authorized representative of such Loan Party.

(n) Corporate Proceedings of the Loan Parties. The Administrative Agent shall have received a copy of the resolutions or equivalent action, in form and substance reasonably satisfactory to the Administrative Agent (acting at the direction of the Required Lenders), of the Board of Directors of each Loan Party authorizing, as applicable, (i) the execution, delivery and performance of this Agreement, any Notes and the other Loan Documents to which it is or will be a party as of the Closing Date, (ii) the Extensions of Credit to such Loan Party (if any) contemplated hereunder and (iii) the granting by it of the Liens to be created pursuant to the Security Documents to which it will be a party as of the Closing Date, certified by the Secretary, any Assistant Secretary or other authorized representative of such Loan Party as of the Closing Date, which certificate shall be in substantially the form of Exhibit F hereto and shall state that the resolutions or other action thereby certified have not been amended, modified (except as any later such resolution or other action may modify any earlier such resolution or other action), superseded or revoked in any respect and are in full force and effect as of the Closing Date.

(o) Incumbency Certificates of the Loan Parties. The Administrative Agent shall have received a certificate of each Loan Party, dated as of the Closing Date, as to the incumbency and signature of the officers or other authorized signatories of such Loan Party executing any Loan Document with respect to such Loan Party on the Closing Date.

(p) Governing Documents. The Administrative Agent shall have received copies of the Organizational Documents of each Loan Party, in each case

certified as of the Closing Date as true, correct and complete copies (as amended through the Closing Date) by (if applicable) the Secretary of State and secretary or other authorized representative of such Loan Party and a certificate of good standing of each Loan Party in the state of organization of such Loan Party.

(q) [Reserved].

(r) Solvency. The Administrative Agent shall have received a certificate of the chief financial officer (or other comparable officer), of the Borrower certifying Solvency, after giving effect to the Transactions, of the Borrower and its Subsidiaries on a consolidated basis in substantially the form of Exhibit H hereto.

(s) PATRIOT Act. The Administrative Agent and the Lenders shall have received at least three days prior to the Closing Date all documentation and other information about the Loan Parties required by regulatory authorities under applicable "know your customer" and anti-money laundering rules and regulations, including without limitation the PATRIOT Act that has been requested in writing at least ten days prior to the Closing Date.

(t) [Reserved].

(u) Counsel Fees. The Borrower shall have paid all fees, charges and disbursements of (i) King & Spalding LLP, counsel to the Administrative Agent and (ii) Skadden, Arps, Slate, Meagher & Flom LLP, counsel to certain of the Lenders, in each case to the extent invoiced at least one (1) Business Day prior to the Closing Date, plus such additional amounts of such fees, charges and disbursements as shall constitute its reasonable estimate of such fees, charges and disbursements incurred or to be incurred by it through the closing proceedings (provided that such estimate shall not thereafter preclude a final settling of accounts between the Borrower and the Administrative Agent).

(v) Representations and Warranties. Each of the representations and warranties made by any Loan Party pursuant to this Agreement or any other Loan Document to which it is a party shall, except to the extent that they relate to a particular date, be true and correct in all material respects on and as of the Closing Date as if made on and as of such date.

(w) No Default. No Default or Event of Default shall have occurred and be continuing.

SECTION 7

Affirmative Covenants

The Borrower hereby agrees that, from and after the Closing Date until payment in full of the Term Loans and all other Term Loan Facility Obligations then due and owing to any Lender or Agent hereunder, the Borrower shall and (except in the case of delivery of

financial information, reports and notices) shall cause each of its respective Restricted Subsidiaries to:

7.1 Financial Statements. Furnish to the Administrative Agent for delivery to each Lender (and the Administrative Agent agrees to make and so deliver such copies):

(a) as soon as available, but in any event not later than the 90th day following the end of each Fiscal Year of the Borrower ending on or after the Closing Date, a copy of the consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such year and the related consolidated statements of operations, changes in equity and cash flows for such year, setting forth, in each case, in comparative form the figures for and as of the end of the previous year, reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit (provided that such report may contain a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit, if such qualification or exception is related solely to the Maturity Date occurring within one year from the date such report is delivered), by KPMG, LLP or other independent certified public accountants of nationally recognized standing not unacceptable to the Administrative Agent in its reasonable judgment (it being agreed that the furnishing of the Borrower's annual report on Form 10-K for such year, as filed with the United States Securities and Exchange Commission, will satisfy the Borrower's obligation under this Subsection 7.1(a) with respect to such year except with respect to the requirement that such financial statements be reported on without a "going concern" or like qualification or exception, or qualification arising out of the scope of the audit);

(b) as soon as available, but in any event not later than the fifth Business Day after the 45th day following the end of each of the first three quarterly periods of each Fiscal Year of the Borrower, the unaudited consolidated balance sheet of the Borrower and its Subsidiaries as at the end of such quarter and the related unaudited consolidated statements of operations and cash flows of the Borrower and its Subsidiaries for such quarter and the portion of the Fiscal Year through the end of such quarter, setting forth, in each case, in comparative form the figures for and as of the corresponding periods of the previous year, certified by a Responsible Officer of the Borrower as being fairly stated in all material respects (subject to normal year-end audit and other adjustments) (it being agreed that the furnishing of the Borrower's quarterly report on Form 10-Q for such quarter, as filed with the United States Securities and Exchange Commission, will satisfy the Borrower's obligations under this Subsection 7.1(b) with respect to such quarter);

(c) all such financial statements delivered pursuant to Subsection 7.1(a) or (b) to (and, in the case of any financial statements delivered pursuant to Subsection 7.1(b) shall be certified by a Responsible Officer of the Borrower to) fairly present in all material respects the financial condition of the Borrower and its Subsidiaries in conformity with GAAP and to be (and, in the case of any financial statements delivered pursuant to Subsection 7.1(b) shall be certified by a Responsible Officer of the Borrower as being) in reasonable detail and prepared in accordance with GAAP applied

consistently throughout the periods reflected therein and with prior periods that began on or after the Closing Date (except, in the case of any financial statements delivered pursuant to Subsection 7.1(b), for the absence of certain footnotes); and

(d) to the extent applicable, concurrently with any delivery of consolidated financial statements referred to in Subsections 7.1(a) and (b) above, related unaudited condensed consolidating financial statements and appropriate reconciliations reflecting the material adjustments necessary (as determined by the Borrower in good faith) to eliminate the accounts of Unrestricted Subsidiaries (if any) from such consolidated financial statements.

Notwithstanding the foregoing, (i) if any of the financial statements or other information is required to be delivered on an earlier date under the ABL Facility, the Borrower shall be required to deliver such financial statements or other information under this Agreement on or before such earlier date, and (ii) the Borrower shall be required to deliver all other financial statements and other information required to be delivered pursuant to Schedule 5.1 of the ABL Credit Agreement and not specified in this Subsection 7.1 by the dates specified in the ABL Credit Agreement.

7.2 Certificates; Other Information. Furnish to the Administrative Agent for delivery to each Lender (and the Administrative Agent agrees to make and so deliver such copies):

(a) [Reserved].

(b) concurrently with the delivery of the financial statements and reports referred to in Subsections 7.1(a) and (b), (x) a certificate signed by a Responsible Officer of the Borrower (a "Compliance Certificate") stating that, to the best of such Responsible Officer's knowledge, each of the Borrower and its Restricted Subsidiaries during such period has observed or performed all of its covenants and other agreements, and satisfied every condition, contained in this Agreement or the other Loan Documents to which it is a party to be observed, performed or satisfied by it, and that such Responsible Officer has obtained no knowledge of any Default or Event of Default, except, in each case, as specified in such certificate and (y) a copy of management's discussion and analysis with respect to such financial statements;

(c) as soon as available, but in any event not later than the 30th day after the beginning of Fiscal Year 2016 of the Borrower and each Fiscal Year thereafter, a copy of the annual business plan by the Borrower of the projected operating budget (including an annual consolidated balance sheet, income statement and statement of cash flows of the Borrower and its Subsidiaries for each fiscal quarter of such Fiscal Year prepared in reasonable detail), each such business plan to be accompanied by a certificate signed by a Responsible Officer of the Borrower to the effect that such Responsible Officer believes such projections to have been prepared on the basis of reasonable assumptions at the time of preparation and delivery thereof;

(d) within five Business Days after the same are filed, copies of all financial statements and periodic reports which the Borrower may file with the United States Securities and Exchange Commission or any successor or analogous Governmental Authority;

(e) within five Business Days after the same are filed, copies of all registration statements and any amendments and exhibits thereto, which the Borrower may file with the United States Securities and Exchange Commission or any successor or analogous Governmental Authority;

(f) promptly, such additional financial and other information as any Agent or Lender may from time to time reasonably request; and

(g) promptly upon reasonable request from the Administrative Agent calculations of Consolidated EBITDA and other Fixed GAAP Terms as reasonably requested by the Administrative Agent upon receipt of a written notice from the Borrower electing to change the Fixed GAAP Date, which calculations shall show the calculations of the respective Fixed GAAP Terms both before and after giving effect to the change in the Fixed GAAP Date and identify the material change(s) in GAAP giving rise to the change in such calculations.

Documents required to be delivered pursuant to Subsection 7.1(a), 7.1(b), 7.1(d), 7.2(b), 7.2(c), 7.2(d), 7.2(e) or 7.2(g) may at the Borrower's option be delivered electronically in accordance with the terms of Subsection 11.2(d).

The Borrower hereby acknowledges that (i) the Administrative Agent may, but shall not be obligated to, make available to the Lenders materials and/or information provided by or on behalf of the Borrower hereunder (collectively, "Borrower Materials") by posting the Borrower Materials on Debt Domain, IntraLinks, Syndtrak or another similar electronic system (the "Platform") and (ii) certain of the Lenders (each, a "Public Lender") may have personnel who do not wish to receive material non-public information with respect to the Borrower or its Affiliates, or the respective securities of any of the foregoing, and who may be engaged in investment and other market-related activities with respect to such Persons' securities. The Borrower hereby agrees that so long as the Borrower is the issuer of any outstanding debt or equity securities that are registered or issued pursuant to a private offering or is actively contemplating issuing any such securities it will use commercially reasonable efforts to identify that portion of the Borrower Materials that may be distributed to the Public Lenders and that: (w) all such Borrower Materials shall be clearly and conspicuously marked "PUBLIC" which, at a minimum, shall mean that the word "PUBLIC" shall appear prominently on the first page thereof; (x) by marking Borrower Materials "PUBLIC," the Borrower shall be deemed to have authorized the Administrative Agent and the Lenders to treat such Borrower Materials as not containing any material non-public information (although it may be sensitive and proprietary) with respect to the Borrower or its securities for purposes of United States federal and state securities laws (provided, however, that to the extent such Borrower Materials constitute Information (as defined in Subsection 11.16), they shall be treated as set forth in Subsection 11.16); (y) all Borrower Materials marked "PUBLIC" are permitted to be made available through a portion of the Platform designated "Public Side Information;" and (z) the Administrative Agent

shall be entitled to treat any Borrower Materials that are not marked "PUBLIC" as being suitable only for posting on a portion of the Platform not designated "Public Side Information."

7.3 Payment of Obligations. Pay, discharge or otherwise satisfy at or before maturity or before they become delinquent, as the case may be, all Taxes except where the amount or validity thereof is currently being contested in good faith by appropriate proceedings diligently conducted and reserves in conformity with GAAP with respect thereto have been provided on the books of the Borrower or any of its Restricted Subsidiaries, as the case may be, or except to the extent that failure to do so, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

7.4 Conduct of Business and Maintenance of Existence; Compliance with Contractual Obligations and Requirements of Law. Preserve, renew and keep in full force and effect its existence and take all reasonable action to maintain all rights, privileges and franchises necessary or desirable in the normal conduct of the business of the Borrower and its Restricted Subsidiaries, taken as a whole, except as otherwise permitted pursuant to Subsection 8.2 or 8.7, provided that the Borrower and its Restricted Subsidiaries shall not be required to maintain any such rights, privileges or franchises, if the failure to do so would not reasonably be expected to have a Material Adverse Effect; and, comply with all Contractual Obligations and Requirements of Law except to the extent that failure to comply therewith, in the aggregate, would not reasonably be expected to have a Material Adverse Effect.

7.5 Maintenance of Property; Insurance. (a) (i) Keep all property useful and necessary in the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in good working order and condition, except where failure to do so would not reasonably be expected to have a Material Adverse Effect; (ii) maintain with financially sound and reputable insurance companies (or any Captive Insurance Subsidiary) insurance on, or self-insure, all property material to the business of the Borrower and its Restricted Subsidiaries, taken as a whole, in at least such amounts and against at least such risks (but including in any event public liability and business interruption) as are usually insured against in the same general area by companies engaged in the same or a similar business; (iii) furnish to the Administrative Agent, upon written request, information in reasonable detail as to the insurance carried; (iv) use commercially reasonable efforts to maintain property and liability policies that provide that in the event of any cancellation thereof during the term of the policy, either by the insured or by the insurance company, the insurance company shall provide to the secured party at least 30 days prior written notice thereof, or in the case of cancellation for non-payment of premium, ten days prior written notice thereof; (v) in the event of any material change in any of the property or liability policies referenced in the preceding clause (iv), use commercially reasonable efforts to provide the Administrative Agent with at least 30 days prior written notice thereof; and (vi) use commercially reasonable efforts to ensure that subject to the Subordinated Notes Intercreditor Agreement at all times the Collateral Agent for the benefit of the Secured Parties, shall be named as an additional insured with respect to liability policies maintained by the Borrower and each Subsidiary Guarantor and the Collateral Agent for the benefit of the Secured Parties, shall be named as loss payee with respect to the property insurance maintained by the Borrower and each Subsidiary Guarantor; provided that, unless an Event

of Default shall have occurred and be continuing, (A) the Collateral Agent shall turn over to the Borrower any amounts received by it as an additional insured or loss payee under any property insurance maintained by the Borrower and its Subsidiaries, (B) the Collateral Agent agrees that the Borrower and/or its applicable Subsidiary shall have the sole right to adjust or settle any claims under such insurance and (C) all proceeds from a Recovery Event shall be paid to the Borrower.

(b) With respect to each property of the Loan Parties subject to a Mortgage:

(i) If any portion of any such property is located in an area identified as a special flood hazard area by the Federal Emergency Management Agency or other applicable agency, such Loan Party shall maintain or cause to be maintained, flood insurance to the extent required by, and in compliance with, applicable law.

(ii) The applicable Loan Party promptly shall comply with and conform to (i) all provisions of each such insurance policy, and (ii) all requirements of the insurers applicable to such party or to such property or to the use, manner of use, occupancy, possession, operation, maintenance, alteration or repair of such property, except for such non-compliance or non-conformity as would not, individually or in the aggregate, reasonably be expected to have a Material Adverse Effect. The applicable Loan Party shall not use or permit the use of such property in any manner which would reasonably be expected to result in the cancellation of any insurance policy or would reasonably be expected to void coverage required to be maintained with respect to such property pursuant to clause (a) of this Subsection 7.5.

(iii) If the Borrower is in default of its obligations to insure or deliver any such prepaid policy or policies, the result of which would reasonably be expected to have a Material Adverse Effect, then the Administrative Agent, at its option upon ten (10) days' written notice to the Borrower, may effect such insurance from year to year at rates substantially similar to the rate at which the Borrower or any Restricted Subsidiary had insured such property, and pay the premium or premiums therefor, and the Borrower shall pay to the Administrative Agent on demand such premium or premiums so paid by the Administrative Agent with interest from the time of payment at a rate per annum equal to 2.00%.

(iv) If such property, or any part thereof, shall be destroyed or damaged and the reasonably estimated cost thereof would exceed $8,250,000, the Borrower shall give prompt notice thereof to the Administrative Agent. All insurance proceeds paid or payable in connection with any damage or casualty to any property shall be applied in the manner specified in the proviso to Subsection 7.5(a).

7.6 Inspection of Property; Books and Records; Discussions; Quarterly Management Call. In the case of the Borrower, keep proper books and records in a manner to allow financial statements to be prepared in conformity with GAAP consistently applied in respect of all material financial transactions and matters involving the material assets and business of the Borrower and its Restricted Subsidiaries, taken as a whole; and permit representatives of the Administrative Agent to visit and inspect any of its properties and

examine and, to the extent reasonable, make abstracts from any of its books and records and to discuss the business, operations, properties and financial and other condition of the Borrower and its Restricted Subsidiaries with officers of the Borrower and its Restricted Subsidiaries and with its independent certified public accountants, in each case at any reasonable time, upon reasonable notice, and as often as may reasonably be desired; provided that representatives of the Borrower may be present during any such visits, discussions and inspections. Promptly after the time of delivery of financial statements with respect to the preceding fiscal quarter pursuant to Subsection 7.1(a) or Section 7.1(b) as applicable (and in no event more than twenty (20) days after the time such financial statements are required to be delivered pursuant to Subsection 7.1(a) or Section 7.1(b), as applicable), the Borrower shall, and shall cause its Responsible Officers to, conduct a conference call with the Administrative Agent and the Lenders to discuss such financial statements.

7.7 Notices. Promptly give notice to the Administrative Agent and each Lender of:

(a) as soon as possible after a Responsible Officer of the Borrower knows thereof, the occurrence of any Default or Event of Default;

(b) as soon as possible after a Responsible Officer of the Borrower knows thereof, any default or event of default under any Contractual Obligation of the Borrower or any of its Restricted Subsidiaries, other than as previously disclosed in writing to the Lenders, which would reasonably be expected to have a Material Adverse Effect;

(c) as soon as possible after a Responsible Officer of the Borrower knows thereof, the occurrence of (i) any default or event of default under the ABL Credit Agreement, (ii) any default or event of default under the Senior Term Debt Credit Agreement or (iii) any payment default under any Additional Obligations Documents or under any agreement or document governing other Indebtedness, in each case relating to Indebtedness in an aggregate principal amount equal to or greater than $7,500,000;

(d) as soon as possible after a Responsible Officer of the Borrower knows thereof, any litigation, investigation or proceeding affecting the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to have a Material Adverse Effect;

(e) the following events, as soon as possible and in any event within 30 days after a Responsible Officer of the Borrower or any of its Restricted Subsidiaries knows thereof: (i) the occurrence or expected occurrence of any Reportable Event (or similar event) with respect to any Single Employer Plan (or Foreign Plan), a failure to make any required contribution to a Single Employer Plan, Multiemployer Plan or Foreign Plan, the creation of any Lien on the property of the Borrower or its Restricted Subsidiaries in favor of the PBGC, a Plan or a Foreign Plan or any withdrawal from, or the full or partial termination, Reorganization or Insolvency of, any Multiemployer Plan or Foreign Plan; (ii) the institution of proceedings or the taking of any other formal action

by the PBGC or the Borrower or any of its Restricted Subsidiaries or any Commonly Controlled Entity or any Multiemployer Plan which would reasonably be expected to result in the withdrawal from, or the termination, Reorganization or Insolvency of, any Single Employer Plan, Multiemployer Plan or Foreign Plan; provided, however, that no such notice will be required under clause (i) or (ii) above unless the event giving rise to such notice, when aggregated with all other such events under clause (i) or (ii) above, would be reasonably expected to result in a Material Adverse Effect; or (iii) the first occurrence after the Closing Date of an Underfunding under a Single Employer Plan or Foreign Plan that exceeds 10.0% of the value of the assets of such Single Employer Plan or Foreign Plan, in each case, determined as of the most recent annual valuation date of such Single Employer Plan or Foreign Plan on the basis of the actuarial assumptions used to determine the funding requirements of such Single Employer Plan or Foreign Plan as of such date;

(f) as soon as possible after a Responsible Officer of the Borrower knows thereof, (i) any release or discharge by the Borrower or any of its Restricted Subsidiaries of any Materials of Environmental Concern required to be reported under applicable Environmental Laws to any Governmental Authority, unless the Borrower reasonably determines that the total Environmental Costs arising out of such release or discharge would not reasonably be expected to have a Material Adverse Effect; (ii) any condition, circumstance, occurrence or event not previously disclosed in writing to the Administrative Agent that would reasonably be expected to result in liability or expense under applicable Environmental Laws, unless the Borrower reasonably determines that the total Environmental Costs arising out of such condition, circumstance, occurrence or event would not reasonably be expected to have a Material Adverse Effect, or would not reasonably be expected to result in the imposition of any lien or other material restriction on the title, ownership or transferability of any facilities and properties owned, leased or operated by the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to result in a Material Adverse Effect; and (iii) any proposed action to be taken by the Borrower or any of its Restricted Subsidiaries that would reasonably be expected to subject the Borrower or any of its Restricted Subsidiaries to any material additional or different requirements or liabilities under Environmental Laws, unless the Borrower reasonably determines that the total Environmental Costs arising out of such proposed action would not reasonably be expected to have a Material Adverse Effect;

(g) any loss, damage, or destruction to a significant portion of the Term Loan Priority Collateral, whether or not covered by insurance; and

(h) not less than 30 days prior to any change in the jurisdiction of organization of any Loan Party, a copy of all documents and certificates intended to be filed or otherwise executed to effect such change.

Each notice pursuant to this Subsection 7.7 shall be accompanied by a statement of a Responsible Officer of the Borrower (and, if applicable, the relevant Commonly Controlled Entity or Restricted Subsidiary) setting forth details of the occurrence referred to therein and stating what action the Borrower (or, if applicable, the relevant Commonly Controlled Entity or Restricted Subsidiary) proposes to take with respect thereto.

7.8 Environmental Laws. (a) (i) Comply substantially with, and require substantial compliance by all tenants, subtenants, contractors, and invitees with, all applicable Environmental Laws; (ii) obtain, comply substantially with and maintain any and all Environmental Permits necessary for its operations as conducted and as planned; and (iii) require that all tenants, subtenants, contractors, and invitees obtain, comply substantially with and maintain any and all Environmental Permits necessary for their operations as conducted and as planned, with respect to any property leased or subleased from, or operated by the Borrower or its Restricted Subsidiaries. For purposes of this Subsection 7.8(a), noncompliance shall not constitute a breach of this covenant, provided that, upon learning of any actual or suspected noncompliance, the Borrower and any such affected Restricted Subsidiary shall promptly undertake and diligently pursue reasonable efforts, if any, to achieve compliance, and provided, further, that in any case such noncompliance would not reasonably be expected to have a Material Adverse Effect.

(b) Promptly comply, in all material respects, with all orders and directives of all Governmental Authorities regarding Environmental Laws, other than such orders or directives (i) as to which the failure to comply would not reasonably be expected to result in a Material Adverse Effect or (ii) as to which: (x) appropriate reserves have been established in accordance with GAAP; (y) an appeal or other appropriate contest is or has been timely and properly taken and is being diligently pursued in good faith; and (z) if the effectiveness of such order or directive has not been stayed, the failure to comply with such order or directive during the pendency of such appeal or contest would not reasonably be expected to have a Material Adverse Effect.

7.9 After-Acquired Real Property and Fixtures; Subsidiaries. (a) With respect to any owned real property or fixtures thereon, in each case with a purchase price or a fair market value at the time of acquisition of at least $250,000, in which any Loan Party acquires ownership rights at any time after the Closing Date (or owned by any Subsidiary that becomes a Loan Party after the Closing Date), promptly grant to the Collateral Agent for the benefit of the Secured Parties, a Lien of record on all such owned real property and fixtures pursuant to a Mortgage or otherwise, upon terms reasonably satisfactory in form and substance to the Collateral Agent and in accordance with any applicable requirements of any Governmental Authority (including any required appraisals of such property under FIRREA and flood determinations under Regulation H of the Board); provided that (i) nothing in this Subsection 7.9 shall defer or impair the attachment or perfection of any security interest in any Collateral covered by any of the Security Documents which would attach or be perfected pursuant to the terms thereof without action by the Borrower, any of its Restricted Subsidiaries or any other Person and (ii) no such Lien shall be required to be granted as contemplated by this Subsection 7.9 on any owned real property or fixtures the acquisition of which is, or is to be, within 180 days of such acquisition, financed or refinanced, in whole or in part through the incurrence of Indebtedness, until such Indebtedness is repaid in full (and not refinanced) or, as the case may be, the Borrower determines not to proceed with such financing or refinancing. In connection with any such grant to the Collateral Agent, for the benefit of the Secured Parties, of a Lien of record on any such real property pursuant to a Mortgage or otherwise in accordance with this Subsection 7.9, the Borrower or such Restricted Subsidiary shall deliver or cause to be delivered to the Collateral Agent corresponding UCC fixture filings and any surveys,

appraisals (including any required appraisals of such property under FIRREA or in connection with flood determinations under Regulation H of the Board), title insurance policies, environmental reports, legal opinions and other documents in connection with such grant of such Lien obtained by it in connection with the acquisition of such ownership rights in such real property consistent with the requirements of Subsection 6.1(k) or as the Collateral Agent shall reasonably request (in light of the value of such real property and the cost and availability of such UCC fixture filings, surveys, appraisals, title insurance policies, environmental reports, legal opinions and other documents and whether the delivery of such UCC fixture filings, surveys, appraisals, title insurance policies, environmental reports, legal opinions and other documents would be customary in connection with such grant of such Lien in similar circumstances).

(b) With respect to any Domestic Subsidiary that is a Wholly Owned Subsidiary (other than an Excluded Subsidiary) (i) created or acquired (including by reason of any Foreign Subsidiary Holdco ceasing to constitute the same) subsequent to the Closing Date by the Borrower or any of its Domestic Subsidiaries that are Wholly Owned Subsidiaries (other than an Excluded Subsidiary), (ii) being designated as a Restricted Subsidiary, (iii) ceasing to be an Immaterial Subsidiary or other Excluded Subsidiary as provided in the applicable definition thereof after the expiry of any applicable period referred to in such definition, (iv) that becomes a guarantor under either the ABL Facility or any of the Senior Term Debt Documents or (v) that becomes a Domestic Subsidiary as a result of a transaction pursuant to, and permitted by, Subsection 8.2 (other than an Excluded Subsidiary), promptly notify the Administrative Agent of such occurrence and, if the Administrative Agent or the Required Lenders so request, promptly (i) execute and deliver to the Collateral Agent for the benefit of the Secured Parties such amendments to the Guarantee and Collateral Agreement as the Collateral Agent shall reasonably deem necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected third priority security interest (as and to the extent provided in the Guarantee and Collateral Agreement) in the Capital Stock of such new Domestic Subsidiary owned directly by the Borrower or any of its Domestic Subsidiaries that are Wholly Owned Subsidiaries (other than Excluded Subsidiaries), (ii) deliver to the Collateral Agent the certificates (if any) representing such Capital Stock, together with undated stock powers, executed and delivered in blank by a duly authorized officer of the parent of such new Domestic Subsidiary and (iii) cause such new Domestic Subsidiary (A) to become a party to the Guarantee and Collateral Agreement and (B) to take all actions reasonably deemed by the Collateral Agent to be necessary or advisable to cause the Lien created by the Guarantee and Collateral Agreement in such new Domestic Subsidiary's Collateral to be duly perfected in accordance with all applicable Requirements of Law (as and to the extent provided in the Guarantee and Collateral Agreement), including the filing of financing statements in such jurisdictions as may be reasonably requested by the Collateral Agent and the delivery of executed Control Agreements with respect to the deposit and securities accounts (other than certain customary excluded accounts to the extent set forth in the Guaranty and Collateral Agreement) of such Domestic Subsidiary.

(c) With respect to any Foreign Subsidiary or Domestic Subsidiary that is not a Wholly Owned Subsidiary created or acquired subsequent to the Closing Date by the Borrower or any of its Domestic Subsidiaries that are Wholly Owned Subsidiaries (in each case, other than any Excluded Subsidiary), the Capital Stock of which is owned directly by the Borrower or a

Domestic Subsidiary that is a Wholly Owned Subsidiary (other than an Excluded Subsidiary), promptly notify the Administrative Agent of such occurrence and if the Administrative Agent or the Required Lenders so request, promptly (i) execute and deliver to the Collateral Agent a new pledge agreement or such amendments to the Guarantee and Collateral Agreement as the Collateral Agent shall reasonably deem necessary or reasonably advisable to grant to the Collateral Agent, for the benefit of the Secured Parties, a perfected third priority security interest (as and to the extent provided in the Guarantee and Collateral Agreement) in the Capital Stock of such new Subsidiary that is directly owned by the Borrower or any Domestic Subsidiary that is a Wholly Owned Subsidiary (other than an Excluded Subsidiary) and (ii) to the extent reasonably deemed advisable by the Collateral Agent, deliver to the Collateral Agent the certificates, if any, representing such Capital Stock, together with undated stock powers, executed and delivered in blank by a duly authorized officer of the relevant parent of such new Subsidiary and take such other action as may be reasonably deemed by the Collateral Agent to be necessary or desirable to perfect the Collateral Agent's security interest therein (provided that in either case in no event shall more than 65.0% of each series of Capital Stock of any new Foreign Subsidiary be required to be so pledged and, provided, further, that in either case no such pledge or security shall be required with respect to any Subsidiary that is not a Wholly Owned Subsidiary and a Restricted Subsidiary to the extent that the grant of such pledge or security interest would violate the terms of any agreements under which the Investment by the Borrower or any of its Restricted Subsidiaries was made therein).

(d) At its own expense, execute, acknowledge and deliver, or cause the execution, acknowledgement and delivery of, and thereafter register, file or record in an appropriate governmental office, any document or instrument reasonably deemed by the Collateral Agent to be necessary or desirable for the creation, perfection and priority and the continuation of the validity, perfection and priority of the foregoing Liens or any other Liens created pursuant to the Security Documents (to the extent the Collateral Agent determines, in its reasonable discretion, that such action is required to ensure the perfection or the enforceability as against third parties of its security interest in such Collateral) in each case in accordance with, and to the extent required by, the Guarantee and Collateral Agreement.

(e) Notwithstanding anything to the contrary in this Agreement, (A) the foregoing requirements shall be subject to the terms of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement and, in the event of any conflict with such terms, the terms of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement, as applicable, shall control, (B) no security interest or lien is or will be granted pursuant to any Loan Document or otherwise in any right, title or interest of any of the Borrower or any of its Subsidiaries in, and "Collateral" shall not include, any Excluded Asset, (C) no Loan Party or any Affiliate thereof shall be required to take any action in any non-U.S. jurisdiction or required by the laws of any non-U.S. jurisdiction in order to create any security interests in assets located or titled outside of the U.S. or to perfect any security interests (it being understood that there shall be no security agreements or pledge agreements governed under the laws of any non-U.S. jurisdiction) and (D) nothing in this Subsection 7.9 shall require that any Subsidiary grant a Lien with respect to any property or assets in which such Subsidiary acquires ownership rights to the extent that the Administrative Agent, in its reasonable judgment, determines that the granting of such a Lien is impracticable.

7.10 Use of Proceeds. Use the proceeds of the Term Loans only for the purposes set forth in Subsection 5.16.

7.11 Commercially Reasonable Efforts to Maintain Ratings. At all times, the Borrower shall use commercially reasonable efforts to maintain ratings of the Initial Term Loans and a corporate rating and corporate family rating, as applicable, for the Borrower by each of S&P and Moody's.

7.12 Accounting Changes. The Borrower will, for financial reporting purposes, cause the Borrower's and each of its Subsidiaries' Fiscal Years to end on December 31st of each calendar year; provided that the Borrower may, no more than once during the term of the Facility, upon written notice to the Administrative Agent, change the financial reporting convention specified above to any other financial reporting convention, in which case the Borrower and the Administrative Agent will, and are hereby authorized by the Lenders to, make any adjustments to this Agreement that are necessary in order to reflect such change in financial reporting.

7.13 Post-Closing Security Perfection. The Borrower agrees to deliver or cause to be delivered such documents and instruments, and take or cause to be taken such other actions as may be reasonably necessary to provide the perfected mortgages and other security interests described in the proviso to Subsection 6.1(i) that are not so provided on the Closing Date, and in any event to provide such perfected mortgages and other security interests and to satisfy such other conditions within the applicable time periods set forth on Schedule 7.13, as such time periods may be extended by the Administrative Agent, in its sole discretion.

7.14 [Post-Closing Matters].

SECTION 8

Negative Covenants

The Borrower hereby agrees that, from and after the Closing Date until payment in full of the Term Loans and all other Term Loan Facility Obligations then due and owing to any Lender or any Agent hereunder:

8.1 Limitation on Indebtedness. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, Incur any Indebtedness; provided, however, that the Borrower or any Subsidiary Guarantor may Incur Indebtedness if on the date of the Incurrence of such Indebtedness, after giving effect to the Incurrence thereof, the Consolidated Coverage Ratio would be equal to or greater than 2.20:1.00 and the Consolidated Total Leverage Ratio would be less than 3.30:1.00.

(b) Notwithstanding the foregoing Subsection 8.1(a), the Borrower and its Restricted Subsidiaries may Incur the following Indebtedness:

(i) (I) Indebtedness Incurred by the Borrower and the Guarantors pursuant to this Agreement and the other Loan Documents and any Refinancing

Indebtedness in respect thereof, (II) Indebtedness Incurred by the Borrower and the Guarantors pursuant to the ABL Facility and any Refinancing Indebtedness in respect thereof, in a maximum principal amount for all such Indebtedness at any time outstanding not exceeding in the aggregate the amount equal to the sum of (A) the lesser of (x) $82,500,000 and (y) an amount equal to the Borrowing Base (measured, for the avoidance of doubt, at the time of such Incurrence), plus (B) without duplication of incremental amounts included in the definition of "Refinancing Indebtedness", in the event of any refinancing of any such Indebtedness, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing and (III) the Senior Term Debt and any Refinancing Indebtedness in respect thereof in an aggregate principal amount not to exceed the sum of (A) $88,000,000 plus (B) any increase to the principal thereof in the form of capitalized (PIK) interest pursuant to the Senior Term Debt Documents and any refinancing of such Indebtedness plus (C) without duplication of incremental amounts included in the definition of "Refinancing Indebtedness", in the event of any refinancing of any such Indebtedness, the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses incurred in connection with such refinancing;

(ii) Indebtedness (A) of any Restricted Subsidiary to the Borrower, or (B) of the Borrower or any Restricted Subsidiary to any Restricted Subsidiary; provided that in the case of this Subsection 8.1(b)(ii), any subsequent issuance or transfer of any Capital Stock of such Restricted Subsidiary to which such Indebtedness is owed, or other event, that results in such Restricted Subsidiary ceasing to be a Restricted Subsidiary or any other subsequent transfer of such Indebtedness (except to the Borrower or a Restricted Subsidiary) will be deemed, in each case, an Incurrence of such Indebtedness by the issuer thereof not permitted by this Subsection 8.1(b)(ii);

(iii) Indebtedness represented by (A) any Indebtedness (other than the Indebtedness described in Subsections 8.1(b)(i) and (ii)) outstanding on the Closing Date and set forth on Schedule 8.1 and (B) any Refinancing Indebtedness Incurred in respect of any Indebtedness described in this Subsection 8.1(b)(iii) or Subsection 8.1(a);

(iv) Purchase Money Obligations, Capitalized Lease Obligations, and in each case any Refinancing Indebtedness with respect thereto not exceed an amount equal to the greater of $16,500,000 and 5.5% of Consolidated Total Assets in the aggregate at any time outstanding;

(v) Indebtedness consisting of (x) accommodation guarantees for the benefit of trade creditors of the Borrower or any of its Restricted Subsidiaries or (y) Indebtedness to Encana, not to exceed $**[_____]**[2] in the aggregate at any time outstanding under clauses (x) and (y) of this Subsection 8.1(b)(v);

(vi) (A) Guarantees by the Borrower or any Restricted Subsidiary of Indebtedness or any other obligation or liability of the Borrower or any Restricted

[2] NTD: To reflect 10% cushion as compared to Senior Term Debt Credit Agreement

Subsidiary (other than any Indebtedness Incurred by the Borrower or such Restricted Subsidiary, as the case may be, in violation of this Subsection 8.1), or (B) without limiting Subsection 8.6, Indebtedness of the Borrower or any Restricted Subsidiary arising by reason of any Lien granted by or applicable to such Person securing Indebtedness of the Borrower or any Restricted Subsidiary (other than any Indebtedness Incurred by the Borrower or such Restricted Subsidiary, as the case may be, in violation of this Subsection 8.1);

(vii) Indebtedness of the Borrower or any Restricted Subsidiary (A) arising from the honoring of a check, draft or similar instrument of such Person drawn against insufficient funds, provided that such Indebtedness is extinguished within five Business Days of its Incurrence, or (B) consisting of guarantees, indemnities, obligations in respect of earnouts or other purchase price adjustments, or similar obligations, Incurred in connection with the acquisition or disposition of any business, assets or Person;

(viii) Indebtedness of the Borrower or any Restricted Subsidiary in respect of (A) letters of credit, bankers' acceptances or other similar instruments or obligations issued, or relating to liabilities or obligations incurred, in the ordinary course of business (including those issued to governmental entities in connection with self-insurance under applicable workers' compensation statutes), or (B) completion guarantees, surety, judgment, appeal or performance bonds, or other similar bonds, instruments or obligations, provided, or relating to liabilities or obligations incurred, in the ordinary course of business, or (C) Hedging Obligations, entered into for bona fide hedging purposes and not for speculation purposes; provided that Hedging Obligations that are provided by any Person that is not a Lender, an Affiliate of a Lender or a lender or Affiliate of a lender under this Agreement, the Senior Term Debt Credit Agreement or the ABL Facility shall not exceed $11,000,000 in the aggregate at any time outstanding, or (D) Management Guarantees, or (E) the financing of insurance premiums in the ordinary course of business, or (F) take-or-pay obligations under supply arrangements incurred in the ordinary course of business, or (G) netting, overdraft protection and other arrangements arising under standard business terms of any bank at which the Borrower or any Restricted Subsidiary maintains an overdraft, cash pooling or other similar facility or arrangement, or (H) Bank Products Obligations;

(ix) [Reserved];

(x) Indebtedness of (A) the Borrower or any Restricted Subsidiary Incurred to finance or refinance, or otherwise Incurred in connection with, any acquisition of assets (including Capital Stock), business or Person, or any merger or consolidation of any Person with or into the Borrower or any Restricted Subsidiary; or (B) any Person that is acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary (including Indebtedness thereof Incurred in connection with any such acquisition, merger or consolidation), provided that on the date of such acquisition, merger or consolidation, after giving effect thereto, either (1) the Borrower would have a Consolidated Total Leverage Ratio equal to or less than 2.50:1.00 or (2) the Consolidated Total Leverage Ratio of the Borrower would equal or be less than the

Consolidated Total Leverage Ratio of the Borrower immediately prior to giving effect thereto; and any Refinancing Indebtedness with respect to any such Indebtedness;

(xi) Indebtedness under the Tax Restructuring Agreements and the Trade Payable Restructuring Agreements;

(xii) Indebtedness issuable upon the conversion or exchange of shares of Disqualified Stock issued in accordance with Subsection 8.1(a), and any Refinancing Indebtedness with respect thereto;

(xiii) Indebtedness of the Borrower or any Restricted Subsidiary in an aggregate principal amount at any time outstanding not exceeding an amount equal to the greater of $11,000,000 and 5.5% of Consolidated Total Assets; and

(xiv) Indebtedness of the Borrower or any Restricted Subsidiary Incurred as consideration in connection with any acquisition of assets (including Capital Stock), business or Person, or any merger or consolidation of any Person with or into the Borrower or any Restricted Subsidiary, and any Refinancing Indebtedness with respect thereto, in an aggregate principal amount at any time outstanding not exceeding $27,250,000; and

(xv) Indebtedness of the Borrower or any Restricted Subsidiary under the SBI Secured Note (as defined in the Plan of Reorganization) in an amount not to exceed $4,500,000.

(c) For purposes of determining compliance with, and the outstanding principal amount of any particular Indebtedness Incurred pursuant to and in compliance with, this Subsection 8.1, (i) any other obligation of the obligor on such Indebtedness (or of any other Person who could have Incurred such Indebtedness under this Subsection 8.1) arising under any Guarantee, Lien or letter of credit, bankers' acceptance or other similar instrument or obligation supporting such Indebtedness shall be disregarded to the extent that such Guarantee, Lien or letter of credit, bankers' acceptance or other similar instrument or obligation secures the principal amount of such Indebtedness; (ii) in the event that Indebtedness incurred pursuant to Subsection 8.1(b) meets the criteria of more than one of the types of Indebtedness described in Subsection 8.1(b), the Borrower, in its sole discretion, shall classify such item of Indebtedness and may include the amount and type of such Indebtedness in one or more of such clauses of Subsection 8.1(b) (including in part under one such clause and in part under another such clause); provided that (if the Borrower shall so determine) any Indebtedness Incurred pursuant to Subsection 8.1(b)(xiii) shall cease to be deemed Incurred or outstanding for purposes of such clause but shall be deemed Incurred for the purposes of Subsection 8.1(a) from and after the first date on which the Borrower or any Restricted Subsidiary could have Incurred such Indebtedness under Subsection 8.1(a) without reliance on such clause; (iii) in the event that Indebtedness could be Incurred in part under paragraph (a) above, the Borrower, in its sole discretion, may classify a portion of such Indebtedness as having been Incurred under paragraph (a) above and the remainder of such Indebtedness as having been Incurred under paragraph (b) above; (iv) the amount of Indebtedness issued at a price that is less than the principal amount thereof shall be equal to the amount of the liability in respect thereof determined in accordance with GAAP; and

(v) the principal amount of Indebtedness outstanding under any subclause of Subsection 8.1(b) shall be determined after giving effect to the application of proceeds of any such Indebtedness to refinance any such other Indebtedness. Notwithstanding anything herein to the contrary, Indebtedness Incurred by the Borrower on the Closing Date under this Agreement, the Senior Term Debt Credit Agreement or the ABL Credit Agreement shall be classified as Incurred under paragraph (b)(i) of this covenant, and not under paragraph (a) of this covenant.

(d) For purposes of determining compliance with any dollar denominated restriction on the Incurrence of Indebtedness denominated in a foreign currency, the dollar equivalent principal amount of such Indebtedness Incurred pursuant thereto shall be calculated based on the relevant currency exchange rate in effect on the date that such Indebtedness was Incurred, in the case of term Indebtedness, or first committed, in the case of revolving or deferred draw Indebtedness, provided that (x) the dollar equivalent principal amount of any such Indebtedness outstanding on the Closing Date shall be calculated based on the relevant currency exchange rate in effect on the Closing Date, (y) if such Indebtedness is Incurred to refinance other Indebtedness denominated in a foreign currency (or in a different currency from such Indebtedness so being Incurred), 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 (whichever is higher) of such Indebtedness being refinanced plus (ii) the aggregate amount of fees, underwriting discounts, premiums and other costs and expenses Incurred in connection with such refinancing and (z) the dollar equivalent principal amount of Indebtedness denominated in a foreign currency and Incurred pursuant to this Agreement, the ABL Facility shall be calculated based on the relevant currency exchange rate in effect on, at the Borrower's option, (A) the Closing Date, (B) any date on which any of the respective commitments under this Agreement, the Senior Term Debt Credit Agreement or the ABL Facility shall be reallocated between or among facilities or subfacilities thereunder, or on which such rate is otherwise calculated for any purpose thereunder, or (C) the date of such Incurrence. The principal amount of any Indebtedness Incurred to refinance other Indebtedness, if Incurred in a different currency from the Indebtedness being refinanced, shall be calculated based on the currency exchange rate applicable to the currencies in which such respective Indebtedness is denominated that is in effect on the date of such refinancing.

8.2 Limitation on Restricted Payments. (a) The Borrower shall not, and shall not permit any Restricted Subsidiary, directly or indirectly, to (i) declare or pay any dividend or make any distribution on or in respect of its Capital Stock (including any such payment in connection with any merger or consolidation to which the Borrower is a party) except (x) dividends or distributions payable solely in its Capital Stock (other than Disqualified Stock) and (y) dividends or distributions payable to the Borrower or any Restricted Subsidiary (and, in the case of any such Restricted Subsidiary making such dividend or distribution, to other holders of its Capital Stock on no more than a pro rata basis, measured by value), (ii) purchase, redeem, retire or otherwise acquire for value any Capital Stock of the Borrower held by Persons other than the Borrower or a Restricted Subsidiary (other than any acquisition of Capital Stock deemed to occur upon the exercise of options if such Capital Stock represents a portion of the exercise price thereof), (iii) voluntarily purchase, repurchase, redeem, defease or otherwise voluntarily acquire or retire for value, prior to scheduled maturity, scheduled repayment or

scheduled sinking fund payment, any Junior Debt (other than a purchase, repurchase, redemption, defeasance or other acquisition or retirement for value in anticipation of satisfying a sinking fund obligation, principal installment or final maturity, in each case due within one year of the date of such purchase, repurchase, redemption, defeasance or other acquisition or retirement for value), (iv) [reserved] or (v) make any Investment other than (x) in New Holdings (a) solely for distribution to the holders of the Capital Stock of New Holdings and their respective Affiliates and Controlled Investment Affiliates and (b) for operating expenses incurred in the ordinary course of business of New Holdings, including, without limitation, expenses related to maintaining its legal existence and taxes or (b) any other Permitted Investment in any Person (any such dividend, distribution, purchase, repurchase, redemption, defeasance, other acquisition or retirement or Investment being herein referred to as a "Restricted Payment"), if at the time the Borrower or such Restricted Subsidiary makes such Restricted Payment and after giving effect thereto:

(1) An Event of Default has occurred and is continuing or would result therefrom;

(2) the Consolidated Total Leverage Ratio would be greater than 2.50:1.00 or Total Liquidity would be less than $22,000,000; or

(3) the aggregate amount of such Restricted Payment and all other Restricted Payments (the amount so expended, if other than in cash, to be as determined in good faith by the Board of Directors, whose determination shall be conclusive and evidenced by a resolution of the Board of Directors) declared or made in any Fiscal Year would exceed $1,100,000.

(b) The provisions of Subsection 8.2(a) do not prohibit any of the following (each, a "Permitted Payment"):

(i) (x) any purchase, redemption, repurchase, defeasance or other acquisition or retirement of Capital Stock of the Borrower ("Treasury Capital Stock") or any Junior Debt made by exchange (including any such exchange pursuant to the exercise of a conversion right or privilege in connection with which cash is paid in lieu of the issuance of fractional shares) for, or out of the proceeds of the issuance or sale of, Capital Stock of the Borrower (other than Disqualified Stock and other than Capital Stock issued or sold to a Subsidiary) ("Refunding Capital Stock") or a capital contribution to the Borrower, in each case other than Excluded Contributions; and (y) if immediately prior to such acquisition or retirement of such Treasury Capital Stock, dividends thereon were permitted pursuant to **[**Subsection 8.2(b)(xi)], dividends on such Refunding Capital Stock in an aggregate amount per annum not exceeding the aggregate amount per annum of dividends so permitted on such Treasury Capital Stock;

(ii) any dividend paid or the consummation of any redemption within 60 days after the date of declaration thereof or of giving of any notice of redemption, as applicable, if at such date of declaration or the giving of such notice, such dividend or redemption would have complied with Subsection 8.2(a);

(iii) Investments or other Restricted Payments in an aggregate amount outstanding at any time not to exceed the amount of Excluded Contributions;

(iv) payments by the Borrower to repurchase or otherwise acquire Capital Stock of the Borrower (including any options, warrants or other rights in respect thereof), from Management Investors (including any repurchase or acquisition by reason of the Borrower retaining any Capital Stock, option, warrant or other right in respect of tax withholding obligations, and any related payment in respect of any such obligation), such payments not to exceed an amount equal to $1,100,000 in any Fiscal Year; provided that any cancellation of Indebtedness owing to the Borrower or any Restricted Subsidiary by any Management Investor in connection with any repurchase or other acquisition of Capital Stock (including any options, warrants or other rights in respect thereof) from any Management Investor shall not constitute a Restricted Payment for purposes of this covenant or any other provision of this Agreement;

(v) [reserved];

(vi) Restricted Payments (including loans or advances) in an aggregate amount not to exceed (net of repayments of any such loans or advances) $2,750,000 in any Fiscal Year;

(vii) (A) with respect to each taxable year (or portion thereof) of the Borrower during which the Borrower qualifies as a partnership or a disregarded entity for U.S. federal income tax purposes, Permitted Tax Distributions and (B) with respect to each taxable year (or portion thereof) of the Borrower during which the Borrower qualifies as a corporation for U.S. federal income tax purposes, without duplication of any loans, advances, dividends, distributions or payments made pursuant to clause (viii)(A) of this Subsection 8.2(b), loans, advances, dividends or distributions to any Parent Entity or other payments by the Borrower or any Restricted Subsidiary, to pay, or permit any Parent Entity to pay, federal, state, foreign, provincial or local taxes measured by income for which any Parent Entity is liable up to an amount not to exceed, with respect to federal taxes, the amount of any such taxes that the Borrower and its Subsidiaries would have been required to pay on a separate company basis, or on a consolidated basis as if the Borrower had filed a consolidated return on behalf of an affiliated group (as defined in Section 1504 of the Code) of which it were the common parent, or with respect to state and local taxes, the amount of any such taxes that the Borrower and its Subsidiaries would have been required to pay on a separate company basis, or on a consolidated, combined, unitary or affiliated basis as if the Borrower had filed a consolidated, combined, unitary or affiliated return on behalf of an affiliated group (as defined in the applicable state or local tax laws for filing such return) consisting only of the Borrower and its Subsidiaries;

(viii) loans, advances, dividends or distributions to any Parent Entity or other payments by the Borrower or any Restricted Subsidiary (A) pursuant to a Tax Sharing Agreement without duplication of any loans, advances, dividends, distributions or payments made pursuant to clause (vii)(B) of this Subsection 8.2(b), or (B) to pay or

permit any Parent Entity to pay (but without duplication) any Parent Expenses or any Related Taxes;

(ix) payments by the Borrower, or loans, advances, dividends or distributions by the Borrower to any Parent Entity to make payments, to holders of Capital Stock of the Borrower or any Parent Entity in lieu of issuance of fractional shares of such Capital Stock;

(x) dividends or other distributions of, or Investments paid for or made with, Capital Stock, Indebtedness or other securities of Unrestricted Subsidiaries;

(xi) indemnification and expense reimbursement payments made pursuant to the Access Management Agreement;

(xii) the declaration and payment of dividends (other than cash dividends) to holders of any class or series of Disqualified Stock, or of any Preferred Stock of a Restricted Subsidiary, Incurred in accordance with the terms of Subsection 8.1;

(xiii) any purchase, redemption, repurchase, defeasance or other acquisition or retirement of any Junior Debt (v) made by exchange for, or out of the proceeds of the Incurrence of, (1) Refinancing Indebtedness Incurred in compliance with Subsection 8.1 or (2) new Indebtedness of the Borrower, or a Guarantor, as the case may be, Incurred in compliance with Subsection 8.1, so long as such new Indebtedness satisfies all requirements for "Refinancing Indebtedness" set forth in the definition thereof applicable to a refinancing of such Junior Debt, (w) from Net Available Cash or any equivalent amount to the extent permitted by Subsection 8.4, (x) from declined amounts as contemplated by Subsection 4.4(e), (y) following the occurrence of a Change of Control (or other similar event described therein as a "change of control"), but only if the Borrower shall have complied with Subsections 8.8(a) prior to purchasing, redeeming, repurchasing, defeasing, acquiring or retiring such Junior Debt or (z) constituting Acquired Indebtedness; and

(xiv) Investments in Unrestricted Subsidiaries in an aggregate amount outstanding at any time not exceeding the greater of $11,000,000 and 3.3% of Consolidated Total Assets;

provided that (A) in the case of Subsections 8.2(b)(ii) and (ix), the net amount of any such Permitted Payment shall be included in subsequent calculations of the amount of Restricted Payments, (B) in all cases other than pursuant to clause (A) immediately above, the net amount of any such Permitted Payment shall be excluded in subsequent calculations of the amount of Restricted Payments and (C) solely with respect to Subsection 8.2(b)(vi), no Event of Default under Subsection 9.1(a), (c), (e), (f), (h), (i), (j) or (k) or other Event of Default known to the Borrower shall have occurred and be continuing at the time of any such Permitted Payment after giving effect thereto. The Borrower, in its sole discretion, may classify any Investment or other Restricted Payment as being made in part under one of the clauses or subclauses of this Subsection 8.2(b) (or, in the case of any Investment, the clauses or subclauses of Permitted

Investments) and in part under one or more other such provisions (or, as applicable, clauses or subclauses).

8.3 Limitation on Restrictive Agreements. The Borrower will not, and will not permit any Restricted Subsidiary to, create or otherwise cause to exist or become effective any consensual encumbrance or restriction on (i) the ability of the Borrower or any of its Restricted Subsidiaries (other than any Foreign Subsidiaries or any Excluded Subsidiaries) to create, incur, assume or suffer to exist any Lien in favor of the Lenders in respect of obligations and liabilities under this Agreement or any other Loan Documents upon any of its property, assets or revenues constituting Collateral as and to the extent contemplated by this Agreement and the other Loan Documents, whether now owned or hereafter acquired or (ii) the ability of any Restricted Subsidiary to (x) pay dividends or make any other distributions on its Capital Stock or pay any Indebtedness or other obligations owed to the Borrower, (y) make any loans or advances to the Borrower or (z) transfer any of its property or assets to the Borrower (provided that dividend or liquidation priority between classes of Capital Stock, or subordination of any obligation (including the application of any remedy bars thereto) to any other obligation, will not be deemed to constitute such an encumbrance or restriction), except any encumbrance or restriction:

(a) pursuant to an agreement or instrument in effect at or entered into on the Closing Date, this Agreement and the other Loan Documents, the ABL Facility Documents, the ABL/Term Loan Intercreditor Agreement, the Senior Term Debt Documents, the Subordinated Notes Intercreditor Agreement and, on and after the execution and delivery thereof, any Junior Lien Intercreditor Agreement, Other Intercreditor Agreement and Additional Obligations Documents;

(b) pursuant to any agreement or instrument of a Person, or relating to Indebtedness or Capital Stock of a Person, which Person is acquired by or merged or consolidated with or into the Borrower or any Restricted Subsidiary, or which agreement or instrument is assumed by the Borrower or any Restricted Subsidiary in connection with an acquisition of assets from such Person or any other transaction entered into in connection with any such acquisition, merger or consolidation, as in effect at the time of such acquisition, merger, consolidation or transaction (except to the extent that such Indebtedness was incurred to finance, or otherwise in connection with, such acquisition, merger, consolidation or transaction); provided that for purposes of this Subsection 8.3(b), if a Person other than the Borrower is the Successor Borrower with respect thereto, any Subsidiary thereof or agreement or instrument of such Person or any such Subsidiary shall be deemed acquired or assumed, as the case may be, by the Borrower or a Restricted Subsidiary, as the case may be, when such Person becomes such Successor Borrower;

(c) pursuant to an agreement or instrument (a "Refinancing Agreement") effecting a refinancing of Indebtedness Incurred or outstanding pursuant or relating to, or that otherwise extends, renews, refunds, refinances or replaces, any agreement or instrument referred to in Subsection 8.3(a) or (b) or this Subsection 8.3(c) (an "Initial Agreement") or that is, or is contained in, any amendment, supplement or other modification to an Initial Agreement or Refinancing Agreement (an

"Amendment"); provided, however, that the encumbrances and restrictions contained in any such Refinancing Agreement or Amendment taken as a whole are not materially less favorable to the Lenders than encumbrances and restrictions contained in the Initial Agreement or Initial Agreements to which such Refinancing Agreement or Amendment relates (as determined in good faith by the Borrower);

(d) (i) pursuant to any agreement or instrument that restricts in a customary manner the assignment or transfer thereof, or the subletting, assignment or transfer of any property or asset subject thereto, (ii) by virtue of any transfer of, agreement to transfer, option or right with respect to, or Lien on, any property or assets of the Borrower or any Restricted Subsidiary not otherwise prohibited by this Agreement, (iii) contained in mortgages, pledges or other security agreements securing Indebtedness or other obligations of the Borrower or a Restricted Subsidiary to the extent restricting the transfer of the property or assets subject thereto, (iv) pursuant to customary provisions restricting dispositions of real property interests set forth in any reciprocal easement agreements of the Borrower or any Restricted Subsidiary, (v) pursuant to Purchase Money Obligations that impose encumbrances or restrictions on the property or assets so acquired, (vi) on cash or other deposits or net worth or inventory imposed by customers or suppliers under agreements entered into in the ordinary course of business, (vii) pursuant to customary provisions contained in agreements and instruments entered into in the ordinary course of business (including but not limited to leases and licenses) or in joint venture and other similar agreements or in shareholder, partnership, limited liability company and other similar agreements in respect of non-wholly owned Restricted Subsidiaries, (viii) that arises or is agreed to in the ordinary course of business and does not detract from the value of property or assets of the Borrower or any Restricted Subsidiary in any manner material to the Borrower or such Restricted Subsidiary, or (ix) pursuant to Hedging Obligations or Bank Products Obligations;

(e) with respect to any agreement for the direct or indirect disposition of Capital Stock of any Person, property or assets, imposing restrictions with respect to such Person, Capital Stock, property or assets pending the closing of such disposition;

(f) by reason of any applicable law, rule, regulation or order, or required by any regulatory authority having jurisdiction over the Borrower or any Restricted Subsidiary or any of their businesses, including any such law, rule, regulation, order or requirement applicable in connection with such Restricted Subsidiary's status (or the status of any Subsidiary of such Restricted Subsidiary) as a Captive Insurance Subsidiary;

(g) pursuant to an agreement or instrument (i) relating to any Indebtedness permitted to be Incurred subsequent to the Closing Date pursuant to Subsection 8.1 (x) if the encumbrances and restrictions contained in any such agreement or instrument taken as a whole are not materially less favorable to the Lenders than the encumbrances and restrictions contained in the Initial Agreements (as determined in good faith by the Borrower), or (y) if such encumbrance or restriction is not materially more disadvantageous to the Lenders than is customary in comparable financings (as determined in good faith by the Borrower) and either (1) the Borrower determines in good faith that such encumbrance or restriction will not materially affect the Borrower's

ability to create and maintain the Liens on the Collateral pursuant to the Security Documents and make principal or interest payments on the Term Loans or (2) such encumbrance or restriction applies only if a default occurs in respect of a payment or financial covenant relating to such Indebtedness or (ii) relating to any sale of receivables by or Indebtedness of a Foreign Subsidiary;

(h) any agreement relating to intercreditor arrangements and related rights and obligations, to or by which the Lenders and/or the Administrative Agent, the Collateral Agent or any other agent, trustee or representative on their behalf may be party or bound at any time or from time to time, and any agreement providing that in the event that a Lien is granted for the benefit of the Lenders another Person shall also receive a Lien, which Lien is permitted by Subsection 8.6; or

(i) any agreement governing or relating to Indebtedness and/or other obligations and liabilities secured by a Lien permitted by Subsection 8.6 (in which case any restriction shall only be effective against the assets subject to such Lien, except as may be otherwise permitted under this Subsection 8.3).

8.4 Limitation on Sales of Assets and Subsidiary Stock. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, make any Asset Disposition unless:

(i) the Borrower or such Restricted Subsidiary receives consideration (including by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise) at the time of such Asset Disposition at least equal to the fair market value of the shares and assets subject to such Asset Disposition, as such fair market value may be determined (and shall be determined, to the extent such Asset Disposition or any series of related Asset Dispositions involves aggregate consideration in excess of $5,000,000) in good faith by the Borrower, whose determination shall be conclusive (including as to the value of all noncash consideration);

(ii) in the case of any Asset Disposition (or series of related Asset Dispositions) having a fair market value of $5,500,000 or more, at least 75.0% of the consideration therefor (excluding, in the case of an Asset Disposition (or series of related Asset Dispositions), any consideration by way of relief from, or by any other Person assuming responsibility for, any liabilities, contingent or otherwise, that are not Indebtedness) received by the Borrower or such Restricted Subsidiary is in the form of cash; and

(iii) to the extent required by Subsection 8.4(b), an amount equal to 100.0% of the Net Available Cash from such Asset Disposition is applied by the Borrower (or any Restricted Subsidiary, as the case may be) as provided therein.

(b) In the event that on or after the Closing Date the Borrower or any Restricted Subsidiary shall make an Asset Disposition or a Recovery Event shall occur, in each case in respect of Collateral, subject to the terms of the Subordinated Notes Intercreditor Agreement an

amount equal to 100.0% of the Net Available Cash from such Asset Disposition or Recovery Event shall be applied by the Borrower (or any Restricted Subsidiary, as the case may be) as follows:

(i) first, either (x) if the Borrower or such Restricted Subsidiary elects, to the extent such Asset Disposition or Recovery Event is an Asset Disposition or Recovery Event of assets that constitute ABL Priority Collateral, to purchase, redeem, repay or prepay, to the extent the Borrower or any Restricted Subsidiary is required by the terms thereof, Indebtedness under the ABL Facility or (in the case of letters of credit, bankers' acceptances or other similar instruments issued thereunder) cash collateralize any such Indebtedness within the time period required by such Indebtedness after the later of the date of such Asset Disposition or Recovery Event, as the case may be, and the date of receipt of such Net Available Cash or (y) so long as (A) no Default or Event of Default shall have occurred and is continuing or would result therefrom, (B) the Borrower shall have given the Administrative Agent prior written notice of the Borrower's intention to apply such Net Available Cash to the costs of replacement of the properties or assets that are the subject of such Asset Disposition or Recovery Event or the cost of purchase or construction of other assets useful in the business of the Borrower or its Subsidiaries, and (C) the Net Available Cash is held in a Deposit Account in which ABL Agent or the Senior Term Agent has a perfected first-priority security interest or the Collateral Agent has a third-priority security interest, to the extent the Borrower or such Restricted Subsidiary elects (by delivery of an officer's certificate by a Responsible Officer to the Administrative Agent) to invest in Additional Assets (including by means of an investment in Additional Assets by a Restricted Subsidiary with an amount equal to Net Available Cash received by the Borrower or another Restricted Subsidiary) within 270 days after the later of the date of such Asset Disposition or Recovery Event, as the case may be, and the date of receipt of such Net Available Cash (such period the "Reinvestment Period"), and to the extent that such applicable Reinvestment Period shall have expired without such investment being made or completed, to pay any amounts remaining in the cash collateral account to the Administrative Agent and applied in accordance with this Section 8.4(b) and Section 4.4(d); provided that the Borrower and its Subsidiaries shall not have the right to use such Net Available Cash to make such investments in excess of $500,000 in any given fiscal year without the prior written consent of the Administrative Agent;

(ii) second, (1) if no application of Net Available Cash election is made pursuant to preceding clause (i) with respect to such Asset Disposition or Recovery Event or (2) if such election is made to the extent of the balance of such Net Available Cash or equivalent amount after application in accordance with Subsection 8.4(b)(i), (x) to the extent such Asset Disposition or Recovery Event is an Asset Disposition or Recovery Event of assets that constitute Collateral, to purchase, redeem, repay or prepay, in accordance with Subsection 4.4(c)(i) (subject to Subsection 4.4(e)) or the agreements or instruments governing the relevant Indebtedness described in clause (B) below, as applicable, (A) the Term Loans and (B) to the extent the Borrower or any Restricted Subsidiary is required by the terms thereof, Additional Obligations and any Refinancing Indebtedness in respect thereof with, in each case, a Lien on the Collateral ranking pari passu with the Liens securing the Term Loan Facility Obligations

on a pro rata basis with the Term Loans and (y) to the extent such Asset Disposition is an Asset Disposition of assets that do not constitute Collateral, to purchase, redeem, repay or prepay, in accordance with Subsection 4.4(c)(i) (subject to Subsection 4.4(e)) or the agreements or instruments governing any relevant Indebtedness permitted under Subsection 8.1, as applicable, (A) the Term Loans and (B) to the extent the Borrower or any Restricted Subsidiary is required by the terms thereof, any other Indebtedness (other than Indebtedness subordinated in right of payment to the Term Loan Facility Obligations) on a pro rata basis with the Term Loans; and

(iii) third, to the extent of the balance of such Net Available Cash or equivalent amount after application in accordance with Subsections 8.4(b)(i) and (ii) above, to fund (to the extent consistent with any other applicable provision of this Agreement) any general corporate purpose (including but not limited to the repurchase, repayment or other acquisition or retirement of Junior Debt);

provided, however, that in connection with any prepayment, repayment or purchase of Indebtedness pursuant to clause (ii) above, the Borrower or such Restricted Subsidiary will retire such Indebtedness and will cause the related loan commitment (if any) to be permanently reduced in an amount equal to the principal amount so prepaid, repaid or purchased.

(c) Notwithstanding the foregoing provisions of this Subsection 8.4, the Borrower and the Restricted Subsidiaries shall not be required to apply any Net Available Cash or equivalent amount in accordance with this Subsection 8.4 except to the extent that (x) the aggregate Net Available Cash from all Asset Dispositions and Recovery Events in respect of Collateral or equivalent amount that is not applied in accordance with this Subsection 8.4 exceeds $7,500,000, in which case the Borrower and its Restricted Subsidiaries shall apply all such Net Available Cash from such Asset Dispositions and Recovery Events or equivalent amount in accordance with Subsection 8.4(b) or (y) the terms of Additional Obligations or any Refinancing Indebtedness in respect thereof with, in each case, a Lien on the Collateral ranking pari passu with the Liens securing the Term Loan Facility Obligations would require Net Available Cash from such Asset Sales and Recovery Events or the equivalent amount to be applied to purchase, redeem, repay or prepay such Indebtedness prior to reaching such $7,500,000 threshold.

(d) For the purposes of Subsection 8.4(a)(ii), the following are deemed to be cash: (1) Temporary Cash Investments and Cash Equivalents, (2) the assumption of Indebtedness of the Borrower (other than Disqualified Stock of the Borrower) or any Restricted Subsidiary and the release of the Borrower or such Restricted Subsidiary from all liability on payment of the principal amount of such Indebtedness in connection with such Asset Disposition, (3) Indebtedness of any Restricted Subsidiary that is no longer a Restricted Subsidiary as a result of such Asset Disposition, to the extent that the Borrower and each other Restricted Subsidiary are released from any Guarantee of payment of the principal amount of such Indebtedness in connection with such Asset Disposition, (4) securities received by the Borrower or any Restricted Subsidiary from the transferee that are converted by the Borrower or such Restricted Subsidiary into cash within 180 days, (5) consideration consisting of Indebtedness of the Borrower or any Restricted Subsidiary, (6) Additional Assets, and (7) any Designated Noncash Consideration received by the Borrower or any of its Restricted Subsidiaries in an Asset

Disposition having an aggregate Fair Market Value, taken together with all other Designated Noncash Consideration received pursuant to this clause (7), not to exceed an aggregate amount at any time outstanding equal to $5,500,000 (with the Fair Market Value of each item of Designated Noncash Consideration being measured at the time received and without giving effect to subsequent changes in value).

8.5 Limitations on Transactions with Affiliates. (a) The Borrower will not, and will not permit any Restricted Subsidiary to, directly or indirectly, enter into or conduct any transaction or series of related transactions (including the purchase, sale, lease or exchange of any property or the rendering of any service) with any Affiliate of the Borrower (an "Affiliate Transaction") involving aggregate consideration in excess of $5,500,000 unless (i) the terms of such Affiliate Transaction are not materially less favorable to the Borrower or such Restricted Subsidiary, as the case may be, than those that could be obtained at the time in a transaction with a Person who is not such an Affiliate and (ii) if such Affiliate Transaction involves aggregate consideration in excess of $16,500,000, the terms of such Affiliate Transaction have been approved by a majority of the Board of Directors. For purposes of this Subsection 8.5(a), any Affiliate Transaction shall be deemed to have satisfied the requirements set forth in this Subsection 8.5(a) if (x) such Affiliate Transaction is approved by a majority of the Disinterested Directors or (y) in the event there are no Disinterested Directors, a fairness opinion is provided by a nationally recognized appraisal or investment banking firm with respect to such Affiliate Transaction.

(b) The provisions of Subsection 8.5(a) will not apply to:

(i) any Restricted Payment Transaction,

(ii) (1) the entering into, maintaining or performance of any employment or consulting contract, collective bargaining agreement, benefit plan, program or arrangement, related trust agreement or any other similar arrangement for or with any current or former employee, officer or director or consultant of or to the Borrower, any Restricted Subsidiary or any Parent Entity heretofore or hereafter entered into in the ordinary course of business, including vacation, health, insurance, deferred compensation, severance, retirement, savings or other similar plans, programs or arrangements, (2) payments, compensation, performance of indemnification or contribution obligations, or the making or cancellation of loans in the ordinary course of business to any such employees, officers, directors or consultants, (3) any issuance, grant or award of stock, options, other equity related interests or other equity securities, to any such employees, officers, directors or consultants, (4) the payment of reasonable fees to directors of the Borrower or any of its Subsidiaries or any Parent Entity (as determined in good faith by the Borrower, such Subsidiary or such Parent Entity), or (5) Management Advances and payments in respect thereof (or in reimbursement of any expenses referred to in the definition of such term),

(iii) any transaction between or among any of the Borrower or one or more Restricted Subsidiaries,

(iv) any transaction arising out of agreements or instruments in existence on the Closing Date and set forth on Schedule 8.5 and any payments made pursuant thereto,

(v) any transaction in the ordinary course of business on terms that are fair to the Borrower and its Restricted Subsidiaries in the reasonable determination of the Board of Directors or senior management of the Borrower, or are not materially less favorable to the Borrower or the relevant Restricted Subsidiary than those that could be obtained at the time in a transaction with a Person who is not an Affiliate of the Borrower,

(vi) any transaction in the ordinary course of business, or approved by a majority of the Board of Directors, between the Borrower or any Restricted Subsidiary and any Affiliate of the Borrower controlled by the Borrower that is a joint venture or similar entity,

(vii) the execution, delivery and performance of any Tax Sharing Agreement,

(viii) (x) the Transactions, all transactions in connection therewith (including but not limited to the financing thereof), and all fees and expenses paid or payable in connection with the Transactions and (y) the entry into the Senior Term Debt Documents and the Incurrence of Indebtedness thereunder, all transactions in connection therewith and all fees and expenses paid or payable in connection with the Transactions,

(ix) any issuance or sale of Capital Stock (other than Disqualified Stock) of the Borrower or any capital contribution to the Borrower, and

(x) any transaction arising out of the Senior Term Debt Documents, or any amendments or modifications thereto, and any payments made pursuant thereto.

8.6 Limitation on Liens. The Borrower shall not, and shall not permit any Restricted Subsidiary to, directly or indirectly, create or permit to exist any Lien (other than Permitted Liens) on any of its property or assets (including Capital Stock of any other Person), whether owned on the Closing Date or thereafter acquired, securing any Indebtedness (the "Initial Lien") unless, in the case of Initial Liens on any asset or property other than Collateral, the Term Loan Facility Obligations are equally and ratably secured with (or on a senior basis to, in the case such Initial Lien secures any Junior Debt) the obligations secured by such Initial Lien for so long as such obligations are so secured. Any such Lien created in favor of the Term Loan Facility Obligations pursuant to the subclause in the preceding sentence requiring an equal and ratable (or senior, as applicable) Lien for the benefit of the Term Loan Facility Obligations will be automatically and unconditionally released and discharged upon (i) the release and discharge of the Initial Lien to which it relates, (ii) in the case of any such Lien in favor of any Subsidiary Guaranty, upon the termination and discharge of such Subsidiary Guaranty in accordance with the terms thereof, hereof and of the Subordinated Notes Intercreditor Agreement, any Junior Intercreditor Agreement and any Other Intercreditor Agreement, in each case, to the extent

applicable, or (iii) any sale, exchange or transfer (other than a transfer constituting a transfer of all or substantially all of the assets of the Borrower that is governed by the provisions of Subsection 8.7) to any Person not an Affiliate of the Borrower of the property or assets secured by such Initial Lien, or of all of the Capital Stock held by the Borrower or any Restricted Subsidiary in, or all or substantially all the assets of, any Restricted Subsidiary creating such Initial Lien.

8.7 Limitation on Fundamental Changes. The Borrower will not consolidate with or merge with or into, or convey, transfer or lease all or substantially all its assets to, any Person, unless:

(i) the resulting, surviving or transferee Person (the "Successor Borrower") will be a Person organized and existing under the laws of the United States of America, any State thereof or the District of Columbia and the Successor Borrower (if not the Borrower) will expressly assume all the obligations of the Borrower under this Agreement and the Loan Documents to which it is a party by executing and delivering to the Administrative Agent a joinder or one or more other documents or instruments in form reasonably satisfactory to the Administrative Agent;

(ii) immediately after giving effect to such transaction (and treating any Indebtedness that becomes an obligation of the Successor Borrower or any Restricted Subsidiary as a result of such transaction as having been Incurred by the Successor Borrower or such Restricted Subsidiary at the time of such transaction), no Default will have occurred and be continuing;

(iii) immediately after giving effect to such transaction, either (A) the Borrower (or, if applicable, the Successor Borrower with respect thereto) could Incur at least $1.00 of additional Indebtedness pursuant to Subsection 8.1(a) or (B) the Consolidated Coverage Ratio of the Borrower (or, if applicable, the Successor Borrower with respect thereto) would equal or exceed the Consolidated Coverage Ratio of the Borrower immediately prior to giving effect to such transaction;

(iv) each Subsidiary Guarantor (other than (x) any Subsidiary Guarantor that will be released from its obligations under its Subsidiary Guaranty in connection with such transaction and (y) any party to any such consolidation or merger) shall have delivered a joinder or other document or instrument in form reasonably satisfactory to the Administrative Agent, confirming its Subsidiary Guaranty (other than any Subsidiary Guaranty that will be discharged or terminated in connection with such transaction);

(v) each Subsidiary Guarantor (other than (x) any Subsidiary that will be released from its grant or pledge of Collateral under the Guarantee and Collateral Agreement in connection with such transaction and (y) any party to any such consolidation or merger) shall have by a supplement to the Guarantee and Collateral Agreement or another document or instrument affirmed that its obligations thereunder shall apply to its Guarantee as reaffirmed pursuant to clause (iv) above;

(vi) each mortgagor of a Mortgaged Fee Property (other than (x) any Subsidiary that will be released from its grant or pledge of Collateral under the Guarantee and Collateral Agreement in connection with such transaction and (y) any party to any such consolidation or merger) shall have affirmed that its obligations under the applicable Mortgage shall apply to its Guarantee as reaffirmed pursuant to clause (iv); and

(vii) the Borrower will have delivered to the Administrative Agent a certificate signed by a Responsible Officer and a legal opinion, each to the effect that such consolidation, merger or transfer complies with the provisions described in this Subsection 8.7(a), provided that (x) in giving such opinion such counsel may rely on such certificate of a Responsible Officer as to compliance with the foregoing clauses (ii) and (iii) of this Subsection 8.7(a) and as to any matters of fact, and (y) no such legal opinion will be required for a consolidation, merger or transfer described in Subsection 8.7(d).

(b) Any Indebtedness that becomes an obligation of the Borrower, any Successor Borrower or any Restricted Subsidiary (or that is deemed to be Incurred by any Restricted Subsidiary that becomes a Restricted Subsidiary) as a result of any such transaction undertaken in compliance with this Subsection 8.7, and any Refinancing Indebtedness with respect thereto, shall be deemed to have been Incurred in compliance with Subsection 8.1.

(c) Upon any transaction involving the Borrower in accordance with Subsection 8.7(a) in which the Borrower is not the Successor Borrower, the Successor Borrower will succeed to, and be substituted for, and may exercise every right and power of, the Borrower under the Loan Documents, and thereafter the predecessor Borrower shall be relieved of all obligations and covenants under the Loan Documents, except that the predecessor Borrower in the case of a lease of all or substantially all its assets will not be released from the obligation to pay the principal of and interest on the Term Loans.

(d) Clauses (ii) and (iii) of Subsection 8.7(a) will not apply to any transaction in which the Borrower consolidates or merges with or into or transfers all or substantially all its properties and assets to (x) an Affiliate incorporated or organized for the purpose of reincorporating or reorganizing the Borrower in another jurisdiction or changing its legal structure to a corporation or other entity or (y) a Restricted Subsidiary of the Borrower so long as all assets of the Borrower and the Restricted Subsidiaries immediately prior to such transaction (other than Capital Stock of such Restricted Subsidiary) are owned by such Restricted Subsidiary and its Restricted Subsidiaries immediately after the consummation thereof. Subsection 8.7(a) will not apply to any transaction in which any Restricted Subsidiary consolidates with, merges into or transfers all or part of its assets to the Borrower.

Any Successor Borrower, if not the Borrower, will provide the information contemplated by Subsection 11.18 to any Lender upon request therefor.

8.8 Change of Control; Limitation on Amendments; Tax Restructuring Agreements; Trade Payable Restructuring Agreements. The Borrower shall not and shall not permit any of its Restricted Subsidiaries to, directly or indirectly:

(a) In the event of the occurrence of a Change of Control, repurchase or repay any Indebtedness then outstanding pursuant to any Junior Debt or any portion thereof, unless the Borrower shall have (i) made payment in full of the Term Loans and any other amounts then due and owing to any Lender or either Agent hereunder and under any Note or (ii) made an offer to pay the Term Loans and any amounts then due and owing to each Lender and each Agent hereunder and under any Note and shall have made payment in full thereof to each such Lender or such Agent which has accepted such offer.

(b) Amend, supplement, waive or otherwise modify the terms of any Additional Obligations or any Refinancing Indebtedness in respect of the foregoing or any indenture or agreement pursuant to which such Additional Obligations or Refinancing Indebtedness have been issued or incurred in any manner inconsistent with the requirements of the definition of "Refinancing Indebtedness", assuming for purposes of this Subsection 8.8(b) that such amendment, supplement, waiver or modification, mutatis mutandis, is a refinancing of such Additional Obligations or Refinancing Indebtedness, as applicable.

(c) Fail to be in compliance with the terms of any of the Tax Restructuring Agreements or the Trade Payable Restructuring Agreements if such noncompliance would permit the holder of the Funded Debt thereunder to accelerate the maturity of such Funded Debt (whether or not the holder accelerates the maturity of such Funded Debt as a result of such noncompliance).

8.9 Limitation on Lines of Business; Limitations on New Holdings. (a) The Borrower shall not, and shall not permit any of its Restricted Subsidiaries to, directly or indirectly, enter into any business, either directly or through any Restricted Subsidiary, except for those businesses of the same general type as those in which the Borrower and its Restricted Subsidiaries are engaged in on the Closing Date or which are reasonably related thereto. (b) New Holdings shall not engage in any business activities or own any property or other assets other than (i) ownership of the Capital Stock of the Borrower, (ii) activities and contractual rights incidental to maintenance of its corporate existence, (iii) performance of its obligations hereunder and under the other Loan Documents and (v) performance of its obligations under the ABL Facility Documents and the Senior Term Debt Documents.

8.10 Sanctions; Anti-Corruption Laws. The Borrower will not, and will not permit any Subsidiary or other Person to, use any the proceeds of any Loan, or lend, contribute or otherwise make available any Loan or the proceeds of any Loan, to any Sanctioned Person, to fund any activities of or business with any Sanctioned Person or in any Sanctioned Country, or in any other manner that will result in a violation by any Person (including any Person participating in the transaction, whether as an Agent, a Lender or otherwise) of any Sanctions. The Borrower will not, and will not permit any Subsidiary or other Person to, use any Loan or the proceeds therefrom for any purpose that would violate the Foreign Corrupt Practices Act of 1977, the UK Bribery Act 2010 and any similar anti-corruption legislation or laws in any other jurisdiction.

SECTION 9

Events of Default

9.1 Events of Default. Any of the following from and after the Closing Date shall constitute an event of default:

(a) The Borrower shall fail to pay any principal of any Term Loan when due in accordance with the terms hereof (whether at stated maturity, by mandatory prepayment or otherwise); or the Borrower shall fail to pay any interest on any Term Loan, or any other amount payable hereunder, within five (5) Business Days after any such interest or other amount becomes due in accordance with the terms hereof; or

(b) Any representation or warranty made or deemed made by any Loan Party herein or in any other Loan Document (or in any amendment, modification or supplement hereto or thereto) or which is contained in any certificate furnished at any time by or on behalf of any Loan Party pursuant to this Agreement or any such other Loan Document shall prove to have been incorrect in any material respect on or as of the date made or deemed made; or

(c) Any Loan Party shall default in the payment, observance or performance of any term, covenant or agreement contained in Section 8; or

(d) Any Loan Party shall default in the observance or performance of any other agreement contained in this Agreement or any other Loan Document (other than as provided in clauses (a) through (c) of this Subsection 9.1), and such default shall continue unremedied for a period of thirty (30) days after the earlier of (A) the date on which a Responsible Officer of the Borrower becomes aware of such failure and (B) the date on which written notice thereof shall have been given to the Borrower by the Administrative Agent or the Required Lenders; or

(e) (i) An "Event of Default" as defined in the ABL Facility Documents shall exist as a result of the failure of the Borrower to pay the Obligations thereunder at maturity, (ii) an "Event of Default" as defined in the Senior Term Debt Documents shall exist as a result of the failure of the Borrower to pay the Obligations thereunder at maturity, (iii) any Loan Party or any of its Restricted Subsidiaries shall default in any payment of principal of or interest on (at final maturity) (A) any Indebtedness (excluding the Term Loans) involving an aggregate amount in excess of $11,000,000 or (B) any Guarantee Obligation involving an aggregate amount in excess of $11,000,000, or (iv) any Loan Party or any of its Restricted Subsidiaries shall default in the observance or performance of any agreement or condition relating to any Indebtedness referred to in clauses (i), (ii) or (iii) above or Guarantee Obligation in respect thereof and the effect of such is to cause the holder or holders of such Indebtedness or beneficiary or beneficiaries of such Guarantee Obligation (or a trustee or agent on behalf of such holder or holders or beneficiary or beneficiaries) to cause, such Indebtedness to become due prior to its stated maturity or such Guarantee Obligation to become payable; or

(f) If (i) the Borrower or any Material Subsidiaries of the Borrower shall commence any case, proceeding or other action (A) under any existing or future law of any jurisdiction, domestic or foreign, relating to bankruptcy, insolvency, reorganization or relief of debtors, seeking to have an order for relief entered with respect to it, or seeking to adjudicate it a bankrupt or insolvent, or seeking reorganization, arrangement, adjustment, winding-up, liquidation, dissolution, composition or other relief with respect to it or its debts (excluding, in each case, the solvent liquidation or reorganization of any Foreign Subsidiary of the Borrower that is not a Loan Party), or (B) seeking appointment of a receiver, interim receiver, receivers, receiver and manager, trustee, custodian, conservator or other similar official for it or for all or any substantial part of its assets, or the Borrower or any Material Subsidiaries of the Borrower shall make a general assignment for the benefit of its creditors; or (ii) there shall be commenced against the Borrower or any Material Subsidiaries of the Borrower any case, proceeding or other action of a nature referred to in clause (i) above which (A) results in the entry of an order for relief or any such adjudication or appointment or (B) remains undismissed, undischarged, unstayed or unbonded for a period of 60 days; or (iii) there shall be commenced against the Borrower or any Material Subsidiaries of the Borrower any case, proceeding or other action seeking issuance of a warrant of attachment, execution, distraint or similar process against all or any substantial part of its assets which results in the entry of an order for any such relief which shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or (iv) the Borrower or any Material Subsidiaries of the Borrower shall take any corporate or other similar organizational action in furtherance of, or indicating its consent to, approval of, or acquiescence in, any of the acts set forth in clause (i), (ii), or (iii) above; or (v) the Borrower or any Material Subsidiaries of the Borrower shall be generally unable to, or shall admit in writing its general inability to, pay its debts as they become due; or

(g) (i) Any Person shall engage in any "prohibited transaction" (as defined in Section 406 of ERISA or Section 4975 of the Code) involving any Plan, (ii) any failure to satisfy the minimum funding standard (within the meaning of Section 412 of the Code or Section 302 of ERISA), whether or not waived, shall exist with respect to any Plan or any Lien in favor of the PBGC or a Plan shall arise on the assets of either of the Borrower or any Commonly Controlled Entity, (iii) a Reportable Event shall occur with respect to, or proceedings shall commence to have a trustee appointed, or a trustee shall be appointed, to administer or to terminate, any Single Employer Plan, which Reportable Event or commencement of proceedings or appointment of a trustee is in the reasonable opinion of the Administrative Agent likely to result in the termination of such Plan for purposes of Title IV of ERISA, (iv) any Single Employer Plan shall terminate for purposes of Title IV of ERISA other than a standard termination pursuant to Section 4041(b) of ERISA, (v) either of the Borrower or any Commonly Controlled Entity shall, or in the reasonable opinion of the Administrative Agent is reasonably likely to, incur any liability in connection with a withdrawal from, or the Insolvency or Reorganization of, a Multiemployer Plan, or (vi) any other event or condition shall occur or exist with respect to a Plan; and in each case in clauses (i) through (vi) above, such event or condition, together with all other such events or conditions, if any, could be reasonably expected to result in a Material Adverse Effect; or

(h) One or more judgments or decrees shall be entered against the Borrower or any of its Restricted Subsidiaries involving in the aggregate at any time a liability (net of any insurance or indemnity payments actually received in respect thereof prior to or within 60 days from the entry thereof, or to be received in respect thereof in the event any appeal thereof shall be unsuccessful) of $11,000,000 or more, and all such judgments or decrees shall not have been vacated, discharged, stayed or bonded pending appeal within 60 days from the entry thereof; or

(i) (i) Any of the Security Documents shall cease for any reason to be in full force and effect (other than pursuant to the terms hereof or thereof), or any Loan Party which is a party to any such Security Document shall so assert in writing or (ii) the Lien created by any of the Security Documents shall cease to be perfected and enforceable in accordance with its terms or of the same effect as to perfection and priority purported to be created thereby with respect to any significant portion of the Collateral (other than in connection with any termination of such Lien in respect of any Collateral as permitted hereby or by any Security Document) and such failure of such Lien to be perfected and enforceable with such priority shall have continued unremedied for a period of twenty (20) days; or

(j) Any Loan Party shall assert in writing that any of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement (after execution and delivery thereof) shall have ceased for any reason to be in full force and effect (other than pursuant to the terms hereof or thereof) or shall knowingly contest, or knowingly support any other Person in any action that seeks to contest, the validity or effectiveness of any such intercreditor agreement (other than pursuant to the terms hereof or thereof); or

(k) A Change of Control shall have occurred.

9.2 Remedies Upon an Event of Default. (a) If any Event of Default occurs and is continuing, then, subject to the terms of the Subordinated Notes Intercreditor Agreement, the Agents may exercise any and all rights and remedies available to the Agents under the Loan Documents and applicable Requirement of Law, and in any such event, (A) if such event is an Event of Default specified in clause (i) or (ii) of Subsection 9.1(f) with respect to the Borrower, automatically the Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement shall immediately become due and payable, and (B) if such event is any other Event of Default, with the consent of the Required Lenders, the Administrative Agent may, or upon the request of the Required Lenders, the Administrative Agent shall, by notice to the Borrower, declare the Term Loans hereunder (with accrued interest thereon) and all other amounts owing under this Agreement to be due and payable forthwith, whereupon the same shall immediately become due and payable.

(b) Except as expressly provided above in this Section 9, to the maximum extent permitted by applicable law, presentment, demand, protest and all other notices of any kind are hereby expressly waived.

SECTION 10

Agency Provisions

10.1 Appointment and Authority.

(a) Each of the Lenders hereby irrevocably appoints Cortland 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 Section are solely for the benefit of the Administrative Agent and the Lenders, and neither the Borrower nor any other Loan Party shall have rights as a third party beneficiary of any of such provisions. It is understood and agreed that the use of the term "agent" herein or in any other Loan Documents (or any other similar term) with reference to the Administrative Agent is not intended to connote any fiduciary or other implied (or express) obligations arising under agency doctrine of any applicable law. Instead such term is used as a matter of market custom, and is intended to create or reflect only an administrative relationship between contracting parties.

(b) The Administrative Agent shall also act as the "collateral agent" under the Loan Documents, and each of the Lenders (including in its capacities as a potential Hedge Bank and a potential Bank Products Bank) hereby irrevocably appoints and authorizes the Administrative Agent to act as the agent of such Lender for purposes of acquiring, holding and enforcing any and all Liens on Collateral granted by any of the Loan Parties to secure any of the Term Loan Facility Obligations, together with such powers and discretion as are reasonably incidental thereto. In this connection, the Administrative Agent, as "collateral agent" and any co-agents, sub-agents and attorneys-in-fact appointed by the Administrative Agent pursuant to Subsection 10.5 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 Section 10 and Section 11 (including Subsection 10.7(a), as though such co-agents, sub-agents and attorneys-in-fact were the "collateral agent" under the Loan Documents) as if set forth in full herein with respect thereto.

10.2 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 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.

10.3 Exculpatory Provisions. The Administrative Agent shall not have any duties or obligations except those expressly set forth herein and in the other Loan

Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(i) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default has occurred and is continuing;

(ii) 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 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, including for the avoidance of doubt any action that may be in violation of the automatic stay under any Debtor Relief Law or that may effect a forfeiture, modification or termination of property of a Defaulting Lender in violation of any Debtor Relief Law; and

(iii) 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 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.

The Administrative Agent shall not be liable for any action taken or not taken by it (i) with the consent or at the request of the Required Lenders (or such other number or percentage of the Lenders as shall be necessary, or as the Administrative Agent shall believe in good faith shall be necessary, under the circumstances as provided in Subsections 11.1 and 9.2) or (ii) in the absence of its own gross negligence or willful misconduct, as determined by a court of competent jurisdiction by a final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default unless and until notice describing such Default is given in writing to the Administrative Agent by the Borrower or a Lender.

The Administrative Agent 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, (iv) the validity, enforceability, effectiveness or genuineness of this Agreement, any other Loan Document or any other agreement, instrument or document, (v) the value or the sufficiency of any Collateral or (vi) the satisfaction of any condition set forth in Section 6 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent.

10.4 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 Borrower), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

10.5 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 Section 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. The Administrative Agent shall not be responsible for the negligence or misconduct of any sub-agents except to the extent that a court of competent jurisdiction determines in a final and non-appealable judgment that the Administrative Agent acted with gross negligence or willful misconduct in the selection of such sub-agents.

10.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the Lenders and the Borrower. Upon receipt of any such notice of resignation, the Required Lenders shall have the right 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 and shall (unless an Event of Default under Section 9.1(f) with respect to the Borrower shall have occurred and be continuing) be subject to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days after the retiring Administrative Agent gives notice of its resignation (or such earlier day as shall be agreed by the Required Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may (but shall not be obligated to) on behalf of the Lenders, appoint a successor Administrative Agent meeting the qualifications set forth above. Whether or not a successor has been appointed, such resignation shall become effective in accordance with such notice on the Resignation Effective Date.

(b) If the Person serving as Administrative Agent is a Defaulting Lender pursuant to clause (iv) of the definition thereof, the Required Lenders may, to the extent permitted by applicable law, by notice in writing to the Borrower and such Person remove such Person as

Administrative Agent and appoint a successor, subject, unless an Event of Default under Section 9.1(f) with respect to the Borrower shall have occurred and be continuing, to approval by the Borrower (which approval shall not be unreasonably withheld or delayed). If no such successor shall have been so appointed by the Required Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the Required Lenders) (the "Removal Effective Date"), then such removal shall nonetheless become effective in accordance with such notice on the Removal Effective Date.

(c) With effect from the Resignation Effective Date or the Removal Effective Date (as applicable) (1) the retiring or removed Administrative 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 the Administrative Agent on behalf of the Lenders under any of the Loan Documents, the retiring or removed Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (2) except for any indemnity payments or other amounts then owed to the retiring or removed Administrative Agent, all payments, communications and determinations provided to be made by, to or through the Administrative Agent shall instead be made by or to each Lender directly, until such time, if any, as the Required Lenders appoint a successor Administrative Agent as provided for above. Upon the acceptance of a successor's appointment as Administrative Agent hereunder, such successor shall succeed to and become vested with all of the rights, powers, privileges and duties of the retiring (or removed) Administrative Agent (other than as provided in Subsection 4.13(f) and other than any rights to indemnity payments or other amounts owed to the retiring or removed Administrative Agent as of the Resignation Effective Date or the Removal Effective Date, as applicable), and the retiring or removed Administrative 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). The fees payable by the Borrower to a successor Administrative Agent shall be the same as those payable to its predecessor unless otherwise agreed between the Borrower and such successor. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Loan Documents, the provisions of this Section and Subsection 11.5 shall continue in effect for the benefit of such retiring or removed Administrative Agent, its sub agents and their respective Related Parties in respect of any actions taken or omitted to be taken by any of them while the retiring or removed Administrative Agent was acting as Administrative Agent.

10.7 Indemnity; Reimbursement by Lenders. (a) To the extent that the Borrower or any other Loan Party for any reason fails to indefeasibly pay any amount required under Subsection 11.5 to be paid by it to the Administrative Agent (or any sub-agent thereof) or the Collateral Agent (or any sub-agent thereof) or any Related Party of any of the foregoing, each Lender severally agrees to pay ratably according to their respective outstanding Term Loans on the date on which the applicable unreimbursed expense or indemnity payment is sought under this Subsection 10.7 such unpaid amount (such indemnity shall be effective whether or not the related losses, claims, damages, liabilities and related expenses are incurred or asserted by any party hereto or any third party); 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 any such sub-agent) or the Collateral Agent (or any sub-agent thereof) or against any Related Party of any of the foregoing acting for the Administrative

Agent (or any such sub-agent) or the Collateral Agent (or any sub-agent thereof) in connection with such capacity. The obligations of the Lenders under this Subsection 10.7 are subject to the provisions of Subsection 4.8.

(b) Any Agent shall be fully justified in failing or refusing to take any action hereunder and under any other Loan Document (except actions expressly required to be taken by it hereunder or under the Loan Documents) unless it shall first be indemnified to its satisfaction by the Lenders pro rata against any and all liability, cost and expense that it may incur by reason of taking or continuing to take any such action.

(c) All amounts due under this Subsection 10.7 shall be payable not later than three Business Days after demand therefor. The agreements in this Subsection 10.7 shall survive the payment of the Loans and all other amounts payable hereunder.

10.8 Collateral Matters. (a) Each Lender authorizes and directs the Administrative Agent and the Collateral Agent to enter into (x) the Security Documents, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement and any Other Intercreditor Agreement for the benefit of the Lenders and the other Secured Parties, (y) any amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to the Security Documents, the Subordinated Notes Intercreditor Agreement, Junior Lien Intercreditor and any Other Intercreditor Agreement or other intercreditor agreements in connection with the incurrence by any Loan Party or any Subsidiary thereof of Additional Indebtedness (each an "Intercreditor Agreement Supplement") to permit such Additional Indebtedness to be secured by a valid, perfected lien (with such priority as may be designated by the Borrower or relevant Subsidiary, to the extent such priority is permitted by the Loan Documents) and (z) any Extension Amendment as provided in Subsection 2.8. Each Lender hereby agrees, and each holder of any Note by the acceptance thereof will be deemed to agree, that, except as otherwise set forth herein, any action taken by the Administrative Agent, the Collateral Agent or the Required Lenders in accordance with the provisions of this Agreement, the Security Documents, the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Other Intercreditor Agreement, any Intercreditor Agreement Supplement or any Extension Amendment and the exercise by the Agents or the Required Lenders of the powers set forth herein or therein, together with such other powers as are reasonably incidental thereto, shall be authorized and binding upon all of the Lenders. Notwithstanding anything to the contrary in this Agreement or in any other Loan Document: (i) the Liens granted to the Collateral Agent in favor of the Secured Parties pursuant to this Agreement and the other Loan Documents and the exercise of any right related to any Collateral shall be subject, in each case, to the terms of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement and any Other Intercreditor Agreement, (b) in the event of any conflict between the terms and provisions of this Agreement or any other Loan Document, on the one hand, and the terms and provisions of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or any Other Intercreditor Agreement, on the other hand, the terms and provisions of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement or Other Intercreditor Agreement, as applicable, shall control and (c) each Lender agrees to be bound by the terms of the Subordinated Notes Intercreditor

Agreement, any Junior Lien Intercreditor Agreement, any Other Intercreditor Agreement and any Intercreditor Agreement Supplement. The Collateral Agent is hereby authorized on behalf of all of the Lenders, without the necessity of any notice to or further consent from any Lender, from time to time, to take any action with respect to any applicable Collateral or Security Documents which may be necessary to perfect and maintain perfected the security interest in and liens upon the Collateral granted pursuant to the Security Documents. Each Lender agrees that it will not have any right individually to enforce or seek to enforce any Security Document or to realize upon any Collateral for the Term Loans unless instructed to do so by the Collateral Agent, it being understood and agreed that such rights and remedies may be exercised only by the Collateral Agent. The Collateral Agent may grant extensions of time for the creation and perfection of security interests in or the obtaining of title insurance, legal opinions or other deliverables with respect to particular assets or the provision of any guarantee by any Subsidiary (including extensions beyond the Closing Date or in connection with assets acquired, or Subsidiaries formed or acquired, after the Closing Date) where it determines that such action cannot be accomplished without undue effort or expense by the time or times at which it would otherwise be required to be accomplished by this Agreement or the Security Documents.

(b) The Lenders hereby authorize each Agent, in each case at its option and in its discretion, (A) to release any Lien granted to or held by such Agent upon any Collateral (i) upon termination of the Initial Term Loan Commitments and payment and satisfaction of all of the Term Loan Facility Obligations under the Loan Documents at any time arising under or in respect of this Agreement or the Loan Documents or the transactions contemplated hereby or thereby that are then due and unpaid, (ii) constituting property being sold or otherwise disposed of (to Persons other than a Loan Party) upon the sale or other disposition thereof, (iii) owned by any Subsidiary Guarantor designated as an Excluded Subsidiary or constituting Capital Stock of an Unrestricted Subsidiary, (iv) if approved, authorized or ratified in writing by the Required Lenders (or such greater amount, to the extent required by Subsection 11.1) or (v) as otherwise may be expressly provided in the relevant Security Documents and (B) to subordinate any Lien on any Excluded Assets or any other property granted to or held by such Agent, as the case may be under any Loan Document to the holder of any Permitted Lien described in clause (c), (d), (e), (f), [(h)], (j), (l) or (p) (other than clause (6) thereof) or clause (o) (with respect to such Liens described in clause [(h)] or (l)) of the definition thereof. Upon request by any Agent, at any time, the Lenders will confirm in writing any Agent's authority to release particular types or items of Collateral pursuant to this Subsection 10.8.

(c) The Lenders hereby authorize the Administrative Agent and the Collateral Agent, as the case may be, in each case at its option and in its discretion, to enter into any amendment, amendment and restatement, restatement, waiver, supplement or modification, and to make or consent to any filings or to take any other actions, in each case as contemplated by Subsection 11.17. Upon request by any Agent, at any time, the Lenders will confirm in writing the Administrative Agent's and the Collateral Agent's authority under this Subsection 10.8(c).

(d) No Agent shall have any obligation whatsoever to the Lenders to assure that the Collateral exists or is owned by the Borrower or any of its Restricted Subsidiaries or is cared for, protected or insured or that the Liens granted to any Agent herein or pursuant hereto have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled

to any particular priority, or to exercise or to continue exercising at all or in any manner or under any duty of care, disclosure or fidelity any of the rights, authorities and powers granted or available to the Agents in this Subsection 10.8 or in any of the Security Documents, it being understood and agreed by the Lenders that in respect of the Collateral, or any act, omission or event related thereto, each Agent may act in any manner it may deem appropriate, in its sole discretion, given such Agent's own interest in the Collateral as a Lender and that no Agent shall have any duty or liability whatsoever to the Lenders, except for its gross negligence or willful misconduct.

(e) Notwithstanding any provision herein to the contrary, any Security Document may be amended (or amended and restated), restated, waived, supplemented or modified as contemplated by and in accordance with either Subsection 11.1 or 11.17, as applicable, with the written consent of the Agent party thereto and the Loan Party party thereto.

(f) The Collateral Agent may, and hereby does, appoint the Administrative Agent as its agent for the purposes of holding any Collateral and/or perfecting the Collateral Agent's security interest therein and for the purpose of taking such other action with respect to the collateral as such Agents may from time to time agree.

10.9 Non-Reliance on Administrative Agent and Other Lenders. Each Lender acknowledges that it has, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information as it has deemed appropriate, made its own credit analysis and decision to enter into this Agreement. Each Lender also acknowledges that it will, independently and without reliance upon the Administrative Agent or any other Lender or any of their Related Parties and based on such documents and information 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.

10.10 [Reserved.]

10.11 Taxes. Each Lender shall, and does hereby, severally indemnify, and shall make payment in respect thereof within 10 days after demand therefor, (x) the Administrative Agent against any Non-Excluded Taxes attributable to such Lender (but only to the extent that the Borrower has not already indemnified the Administrative Agent for such Non-Excluded Taxes and without limiting the obligation of the Borrower to do so), (y) the Administrative Agent against any Taxes attributable to such Lender's failure to comply with the provisions of Subsection 11.6(b)(vi) relating to the maintenance of a Participant Register and (z) the Administrative Agent against any Excluded Taxes attributable to such Lender, in each case, that are payable or paid by the Administrative Agent in connection with any Loan Document, and any reasonable expenses arising therefrom or with respect thereto, whether or not such Taxes were correctly or legally imposed or asserted by the relevant Governmental Authority. A certificate as to the amount of such payment or liability delivered to any Lender by the Administrative Agent shall be conclusive absent manifest error. Each Lender hereby authorizes the Administrative Agent to set off and apply any and all amounts at any time owing to such

Lender under this Agreement or any other Loan Document against any amount due to the Administrative Agent under this Subsection 10.11.

10.12 Administrative Agent May File Proofs of Claim. 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 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 Borrower) shall be entitled and empowered, by intervention in such proceeding or otherwise:

(i) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Loans and all other Term Loan Facility Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders and the Administrative Agent (including any claim for the reasonable compensation, expenses, disbursements and advances of the Lenders and the Administrative Agent and their respective agents and counsel and all other amounts due the Lenders and the Administrative Agent under Subsections 4.5 and 11.5) allowed in such judicial proceeding; and

(ii) 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, assignee, trustee, liquidator, sequestrator or other similar official in any such judicial proceeding is hereby authorized by each Lender to make such payments to the Administrative Agent and, in the event that the Administrative Agent shall consent to the making of such payments directly to the Lenders, 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 Subsections 4.5 and 11.5.

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 any plan of reorganization, arrangement, adjustment or composition affecting the Term Loan Facility Obligations or the rights of any Lender or to authorize the Administrative Agent to vote in respect of the claim of any Lender in any such proceeding.

10.13 Application of Proceeds. The Lenders, the Administrative Agent and the Collateral Agent agree, as among such parties, as follows: subject to the terms of the Subordinated Notes Intercreditor Agreement, any Junior Lien Intercreditor Agreement, any Other Intercreditor Agreement or any Intercreditor Agreement Supplement, after the occurrence and during the continuance of an Event of Default, all amounts collected or received by the Administrative Agent, the Collateral Agent or any Lender on account of amounts then due and outstanding under any of the Loan Documents shall, except as otherwise expressly provided herein, be applied as follows: first, to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees to the extent provided herein) due and owing hereunder of the Administrative Agent and the Collateral Agent in

connection with enforcing the rights of the Agents and the Lenders under the Loan Documents (including all expenses of sale or other realization of or in respect of the Collateral and any sums advanced to the Collateral Agent or to preserve its security interest in the Collateral), second, to pay all reasonable out-of-pocket costs and expenses (including reasonable attorneys' fees to the extent provided herein) due and owing hereunder of each of the Lenders in connection with enforcing such Lender's rights under the Loan Documents, third, to pay interest on Loans then outstanding; fourth, to pay principal of Loans then outstanding and obligations under Interest Rate Agreements, Currency Agreements, Commodity Agreements and Bank Product Agreements permitted hereunder and secured by the Guarantee and Collateral Agreement, ratably among the applicable Secured Parties in proportion to the respective amounts described in this clause "fourth" payable to them, and fifth, to pay the surplus, if any, to whomever may be lawfully entitled to receive such surplus. To the extent any amounts available for distribution pursuant to clause "third" or "fourth" above are insufficient to pay all obligations described therein in full, such moneys shall be allocated pro rata among the applicable Secured Parties in proportion to the respective amounts described in the applicable clause at such time. This Subsection 10.13 may be amended (and the Lenders hereby irrevocably authorize the Administrative Agent to enter into any such amendment) to the extent necessary to reflect differing amounts payable, and priorities of payments, to Lenders participating in any new classes or tranches of loans added pursuant to Subsection 2.8.

SECTION 11

Miscellaneous

11.1 Amendments and Waivers. (a) Neither this Agreement nor any other Loan Document, nor any terms hereof or thereof, may be amended, restated, supplemented, modified or waived except in accordance with the provisions of this Subsection 11.1. The Required Lenders may (together with notice to the Administrative Agent, which notice shall be a condition to effectiveness to such amendment or waiver), or, with the written consent of the Required Lenders, the Administrative Agent may, from time to time, (x) enter into with the respective Loan Parties hereto or thereto, as the case may be, written amendments, supplements or modifications hereto and to the other Loan Documents for the purpose of adding any provisions to this Agreement or to the other Loan Documents or changing, in any manner the rights or obligations of the Lenders or the Loan Parties hereunder or thereunder, or (y) waive at any Loan Party's request, on such terms and conditions as the Required Lenders or the Administrative Agent, as the case may be, may specify in such instrument, any of the requirements of this Agreement or the other Loan Documents or any Default or Event of Default and its consequences; provided, however, that amendments pursuant to Subsections 11.1(d) may be effected without the consent of the Required Lenders to the extent provided therein; provided further, that no such waiver and no such amendment, supplement or modification shall:

(i) (A) reduce or forgive the amount or extend the scheduled date of maturity of any Loan or of any scheduled installment thereof (including extending the Maturity Date) without the written consent of each Lender directly affected thereby, (B) reduce the stated rate of any interest, commission or fee payable hereunder (other than as

a result of any waiver of the applicability of any post-default increase in interest rates) without the written consent of each Lender directly affected thereby, (C) postpone any date fixed by this Agreement or any other Loan Document for any payment or mandatory prepayment of principal, interest, fees or other amounts due to the Lenders (or any of them) hereunder or under any other Loan Document without the written consent of each Lender directly affected thereby or (D) increase or extend any Lender's Initial Term Loan Commitment 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 repayment of the Loans of all Lenders shall not constitute an extension of the scheduled date of maturity, any scheduled installment, or the scheduled date of payment of the Loans of any Lender or an increase in the Initial Term Loan Commitment of any Lender);

(ii) amend, modify or waive any provision of this Subsection 11.1(a) or reduce the percentage specified in the definition of "Required Lenders," or consent to the assignment or transfer by the Borrower of any of its rights and obligations under this Agreement and the other Loan Documents (other than pursuant to Subsection 8.7 or 11.6(a)), in each case without the written consent of all the Lenders;

(iii) release Guarantors accounting for all or substantially all of the value of the Guarantee of the Obligations pursuant to the Guarantee and Collateral Agreement, or, in the aggregate (in a single transaction or a series of related transactions), all or substantially all of the Collateral without the consent of all of the Lenders, except as expressly permitted hereby or by any Security Document (as such documents are in effect on the date hereof or, if later, the date of execution and delivery thereof in accordance with the terms hereof);

(iv) require any Lender to make Loans having an Interest Period of longer than six (6) months or shorter than one month without the consent of such Lender;

(v) amend, modify or waive any provision of Section 10 without the written consent of the Agents;

(vi) waive any condition set forth in Subsection 6.1 without the written consent of each Lender, except to the extent otherwise provided for therein; or

(vii) amend, modify or waive the order of application of payments set forth in Subsection 4.4(d), 4.8(a), 10.13 or 11.7, in each case without the consent of all the Lenders.

(b) Any waiver and any amendment, supplement or modification pursuant to this Subsection 11.1 shall apply to each of the Lenders and shall be binding upon the Loan Parties, the Lenders, the Agents and all future holders of the Loans. In the case of any waiver, each of the Loan Parties, the Lenders and the Agents shall be restored to their former position and rights hereunder and under the other Loan Documents, and any Default or Event of Default waived

shall be deemed to be cured and not continuing; but no such waiver shall extend to any subsequent or other Default or Event of Default, or impair any right consequent thereon.

(c) Notwithstanding anything to the contrary herein, no Defaulting Lender shall have any right to approve or disapprove any amendment, waiver or consent hereunder (and any amendment, waiver or consent which by its terms requires the consent of all Lenders or each affected Lender may be effected with the consent of the applicable Lenders other than Defaulting Lenders), except that (x) the commitment of any Defaulting Lender may not be increased or extended without the consent of such Lender and (y) any waiver, amendment or modification requiring the consent of all Lenders or each affected Lender that by its terms affects any Defaulting Lender disproportionately adversely relative to other affected Lenders shall require the consent of such Defaulting Lender.

(d) Notwithstanding any provision herein to the contrary, this Agreement and the other Loan Documents may be amended (i) to cure any ambiguity, mistake, omission, typographical error, defect, or inconsistency with the consent of the Borrower and the Administrative Agent, (ii) [reserved], (iii) in accordance with Subsection 2.8 to effectuate an Extension with the written consent of the Borrower and the Extending Lenders, (iv) in accordance with Subsection 7.12, to change the financial reporting convention and (v) with the consent of the Borrower and the Administrative Agent (in each case such consent not to be unreasonably withheld or delayed), in the event any mandatory prepayment or redemption provision in respect of asset sales, casualty or condemnation events included or to be included in any Indebtedness constituting Additional Obligations or that would constitute Additional Obligations would result in such Indebtedness being prepaid or redeemed on a more than ratable basis with the Term Loans in respect of such asset sale, casualty or condemnation event prepayment, to provide for mandatory prepayments of the Term Loans such that, after giving effect thereto, the prepayments and redemptions made in respect of such Indebtedness are not on more than a ratable basis. Without limiting the generality of the foregoing, any provision of this Agreement and the other Loan Documents, including Subsection 4.4, 4.8 or 10.13 hereof, may be amended as set forth in the immediately preceding sentence pursuant to any Extension Amendment, as the case may be, to provide for non-pro rata borrowings and payments of any amounts hereunder as between any Tranches, including the Term Loans and any Extended Term Tranche, or to provide for the inclusion, as appropriate, of the Lenders of any Extended Term Tranche in any required vote or action of the Required Lenders or of the Lenders of each Tranche hereunder. The Administrative Agent hereby agrees (if requested by the Borrower) to execute any amendment referred to in this clause (d) or an acknowledgement thereof.

(e) Notwithstanding any provision herein to the contrary, this Agreement may be amended (or deemed amended) or amended and restated with the written consent of the Required Lenders, the Administrative Agent and the Borrower (x) to add one or more additional credit facilities to this Agreement and to permit the extensions of credit from time to time outstanding thereunder and the accrued interest and fees in respect thereof to share ratably in the benefits of this Agreement and the other Loan Documents with the existing Facilities and the accrued interest and fees in respect thereof, (y) to include, as appropriate, the Lenders holding such credit facilities in any required vote or action of the Required Lenders or of the Lenders of each Facility hereunder and (z) to provide class protection for any additional credit facilities.

(f) Notwithstanding any provision herein to the contrary, any Security Document may be amended (or amended and restated), restated, waived, supplemented or modified as contemplated by Subsection 11.17 with the written consent of the Agent party thereto and the Loan Party party thereto.

(g) If, in connection with any proposed change, waiver, discharge or termination of or to any of the provisions of this Agreement and/or any other Loan Document as contemplated by Subsection 11.1(a), the consent of each Lender or each affected Lender, as applicable, is required and the consent of the Required Lenders at such time is obtained but the consent of one or more of such other Lenders whose consent is required is not obtained (each such Lender, a "Non-Consenting Lender") then the Borrower may, on notice to the Administrative Agent and the Non-Consenting Lender, (A) replace such Non-Consenting Lender by causing such Lender to (and such Lender shall be obligated to) assign pursuant to Subsection 11.6 (with the assignment fee and any other costs and expenses to be paid by the Borrower in such instance) all of its rights and obligations under this Agreement to one or more assignees; provided that neither the Administrative Agent nor any Lender shall have any obligation to the Borrower to find a replacement Lender; provided, further, that the applicable assignee shall have agreed to the applicable change, waiver, discharge or termination of this Agreement and/or the other Loan Documents; and provided, further, that all obligations of the Borrower owing to the Non-Consenting Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such Non-Consenting Lender concurrently with such Assignment and Acceptance or (B) so long as no Event of Default under Subsection 9.1(a) or (f) then exists or will exist immediately after giving effect to the respective prepayment, upon notice to the Administrative Agent, prepay the Loans and, if applicable, terminate the commitments of such Non-Consenting Lender, in whole or in part, subject to Subsection 4.12, without premium or penalty. In connection with any such replacement under this Subsection 11.1(g), if the Non-Consenting Lender does not execute and deliver to the Administrative Agent a duly completed Assignment and Acceptance and/or any other documentation necessary to reflect such replacement by the later of (a) the date on which the replacement Lender executes and delivers such Assignment and Acceptance and/or such other documentation and (b) the date as of which all obligations of the Borrower owing to the Non-Consenting Lender relating to the Loans and participations so assigned shall be paid in full by the assignee Lender to such Non-Consenting Lender, then such Non-Consenting Lender shall be deemed to have executed and delivered such Assignment and Acceptance and/or such other documentation as of such date and the Borrower shall be entitled (but not obligated) to execute and deliver such Assignment and Acceptance and/or such other documentation on behalf of such Non-Consenting Lender, and the Administrative Agent shall record such assignment in the Register.

11.2 Notices. (a) All notices, requests, and demands to or upon the respective parties hereto to be effective shall be in writing (including telecopy), and, unless otherwise expressly provided herein, shall be deemed to have been duly given or made when delivered by hand, or when received if mailed by certified or registered mail, or, in the case of telecopy notice, when sent, or, in the case of delivery by a nationally recognized overnight courier, when received, addressed as follows in the case of the Borrower, the Administrative Agent and the Collateral Agent, and as set forth in Schedule A in the case of the other parties hereto, or to such other address as may be hereafter notified by the respective parties hereto and any future holders of the Loans:

The Borrower	Boomerang Tube, LLC 14567 N. Outer Forty Road, 5th Floor Chesterfield, MO 63017 Attention: General Counsel or Chief Financial Officer Facsimile: (636) 534-5657 Telephone: (636) 534-5656 and (636) 812-0478 Electronic mail: mcullen@boomerangtube.com and jason.roberts@boomerangtube.com
With copies (which shall not constitute notice) to:	Debevoise & Plimpton LLP 919 Third Avenue New York, New York 10022 Attention: My Chi To, Esq. Facsimile: (212) 521-7015 Telephone: (212) 909-6000 Electronic mail: mcto@debevoise.com
The Administrative Agent/the Collateral Agent:	*Administrative Agent's Office:* Cortland Capital Market Services LLC 225 W. Washington St., 21st Floor Chicago, Illinois 60606 Attention: Ryan Morick and Legal Department Telephone: 312-564-5072 Telecopier: 312-376-0751 Electronic Mail: ryan.morick@cortlandglobal.com and legal@cortlandglobal.com
With copies (which shall not constitute notice) to:	King & Spalding LLP 1185 Avenue of the Americas New York, New York 10036 Attention: Michael C. Rupe, Esq. Telephone: (212) 556-2135 Facsimile: (212) 556-2222 E-mail: mrupe@kslaw.com

provided that any notice, request or demand to or upon the Administrative Agent or the Lenders pursuant to Subsection 4.2, 4.4 or 4.8 shall not be effective until received.

(b) Without in any way limiting the obligation of any Loan Party and its Subsidiaries to confirm in writing any telephonic notice permitted to be given hereunder, the Administrative Agent may prior to receipt of written confirmation act without liability upon the

basis of such telephonic notice, believed by the Administrative Agent in good faith to be from a Responsible Officer of a Loan Party.

(c) Loan Documents may be transmitted and/or signed by facsimile or other electronic means (i.e., a "pdf" or "tif"). The effectiveness of any such documents and signatures shall, subject to applicable law, have the same force and effect as manually signed originals and shall be binding on each Loan Party, each Agent and each Lender. The Administrative Agent may also require that any such documents and signatures be confirmed by a manually signed original thereof; provided that the failure to request or deliver the same shall not limit the effectiveness of any facsimile or other electronic document or signature.

(d) Notices and other communications to the Lenders hereunder may be delivered or furnished by electronic communication (including electronic mail and Internet or intranet websites) pursuant to procedures approved by the Administrative Agent; provided that the foregoing shall not apply to notices to any Lender pursuant to Section 2 if such Lender, as applicable, has notified the Administrative Agent that it is incapable of receiving notices under such Section by electronic communication. The Administrative Agent or the 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. Unless the Administrative Agent otherwise prescribes (i) notices and other communications sent to an e-mail address shall be deemed received upon the sender's receipt of an acknowledgement from the intended recipient (such as by the "return receipt requested" function, as available, return e-mail or other written acknowledgement) and (ii) notices or communications posted to an Internet or intranet website (including the Borrower's website on the Internet at the website address listed on Schedule 7.2(d) (or such other website address as the Borrower may specify by written notice to the Administrative Agent from time to time)) 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 that if such notice, e-mail or other communication is not sent during the normal business hours of the recipient, such notice, e-mail or communication shall be deemed to have been sent at the opening of business on the next Business Day for the recipient.

(e) THE PLATFORM IS PROVIDED "AS IS" AND "AS AVAILABLE." THE AGENT PARTIES (AS DEFINED BELOW) DO NOT WARRANT THE ACCURACY OR COMPLETENESS OF THE BORROWER MATERIALS OR THE ADEQUACY OF THE PLATFORM AND EXPRESSLY DISCLAIM LIABILITY FOR ERRORS IN OR OMISSIONS FROM THE BORROWER MATERIALS. NO WARRANTY OF ANY KIND, EXPRESS, IMPLIED OR STATUTORY, INCLUDING ANY WARRANTY OF MERCHANTABILITY, FITNESS FOR A PARTICULAR PURPOSE, NON-INFRINGEMENT OF THIRD PARTY RIGHTS OR FREEDOM FROM VIRUSES OR OTHER CODE DEFECTS, IS MADE BY ANY AGENT PARTY IN CONNECTION WITH THE BORROWER MATERIALS OR THE PLATFORM. In no event shall the Administrative Agent or any of its Related Parties (collectively, "Agent Parties") have any liability to the Borrower, any Lender or any other Person for losses, claims, damages, liabilities or expenses of any kind (whether in tort, contract or otherwise) arising out of any Loan Party's or the Administrative Agent's transmission of Borrower Materials through the Internet.

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

(g) The Administrative Agent and the Lenders shall be entitled to rely and act upon any notices purportedly given by or on behalf of the Borrower or any other Loan Party even if (i) such notices were not made in a manner specified herein, were incomplete or were not preceded or followed by any other form of notice specified herein or (ii) the terms thereof, as understood by the recipient, varied from any confirmation thereof. All telephonic notices to and other communications with the Administrative Agent may be recorded by the Administrative Agent, and each of the parties hereto hereby consents to such recording.

11.3 No Waiver; Cumulative Remedies; Enforcement. No failure to exercise and no delay in exercising, on the part of any Agent, any Lender or any Loan Party, any right, remedy, power or privilege hereunder or under the other Loan Documents shall operate as a waiver thereof; nor shall any single or partial exercise of any right, remedy, power or privilege hereunder preclude any other or further exercise thereof or the exercise of any other right, remedy, power or privilege. The rights, remedies, powers and privileges herein provided are cumulative and not exclusive of any rights, remedies, powers and privileges provided by law.

Notwithstanding anything to the contrary contained herein or in any other Loan Document, the authority to enforce rights and remedies hereunder and under the other Loan Documents against the Loan Parties or any of them shall be vested exclusively in, and all actions and proceedings at law in connection with such enforcement shall be instituted and maintained exclusively by, the Administrative Agent in accordance with Subsection 9.2 for the benefit of all the Lenders; provided, however, that the foregoing shall not prohibit (i) the Administrative Agent from exercising on its own behalf the rights and remedies that inure to its benefit (solely in its capacity as Administrative Agent) hereunder and under the other Loan Documents, (ii) any Lender from exercising setoff rights in accordance with Subsection 11.7 (subject to the terms of Subsection 11.7) or (iv) any Lender from filing proofs of claim or appearing and filing pleadings on its own behalf during the pendency of a proceeding relative to any Loan Party under any Debtor Relief Law; and provided, further, that if at any time there is no Person acting as Administrative Agent hereunder and under the other Loan Documents, then (x) the Required

Lenders shall have the rights otherwise ascribed to the Administrative Agent pursuant to Subsection 9.2 and (y) in addition to the matters set forth in clauses (iii) and (iv) of the preceding proviso and subject to Subsection 11.7, any Lender may, with the consent of the Required Lenders, enforce any rights and remedies available to it and as authorized by the Required Lenders.

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

11.5 Payment of Expenses and Taxes; Indemnity. The Borrower agrees (a) to pay or reimburse the Agents and their Affiliates for (1) all their reasonable out-of-pocket costs and expenses incurred in connection with (i) the syndication of the Facilities and the development, preparation, execution and delivery of, and any amendment, supplement, waiver or modification to, this Agreement and the other Loan Documents and any other documents prepared in connection herewith or therewith (whether or not the transactions contemplated hereby or thereby shall be consummated), (ii) the consummation and administration of the transactions (including the syndication of the Initial Term Loan Commitments) contemplated hereby and thereby and (iii) efforts to monitor the Loans and verify, protect, evaluate, assess, appraise, collect, sell, liquidate or otherwise dispose of any of the Collateral, and (2) the reasonable fees and disbursements of King & Spalding LLP, Skadden, Arps, Slate, Meagher & Flom LLP, Agents' local counsel (if any), consultants, advisors, appraisers and auditors, (b) to pay or reimburse each Lender and the Agents and their Affiliates for all their reasonable costs and expenses incurred in connection with the enforcement or preservation of any rights under this Agreement (including its rights under this Subsection 11.5), the other Loan Documents and any other documents prepared in connection herewith or therewith, or in connection with any workout, restructuring or negotiations in respect of the Loans including the reasonable fees and disbursements of counsel to the Agents and the Lenders, (c) to pay, indemnify, or reimburse each Lender and the Agents for, and hold each Lender and the Agents harmless from, any and all recording and filing fees, and any and all stamp, court, documentary, excise, intangible and other similar Taxes, if any, which may be payable or determined to be payable in connection with the execution, delivery, enforcement, or registration of, the receipt or perfection of a security interest under, the consummation or administration of any of the transactions contemplated by, any amendment, supplement or modification of, or any waiver or consent under or in respect of, this Agreement, the other Loan Documents and any such other documents, and any and all liabilities with respect to, or resulting from the delay in paying, any of the foregoing fees or Taxes and (d) to pay, indemnify or reimburse each Lender, each Agent (and any sub-agent thereof) and each Related Party of any of the foregoing Persons (each, an "Indemnitee") for, and hold each Indemnitee harmless from and against,

any and all other liabilities, obligations, losses, claims, damages, penalties, actions, judgments, suits, costs, expenses or disbursements of any kind or nature whatsoever (including the fees, charges and disbursements of any counsel for any Indemnitee), incurred by any Indemnitee or asserted against any Indemnitee by any Person (including the Borrower or any other Loan Party) other than such Indemnitees and its Related Parties arising out of, in connection with, as a result of or with respect to the execution, delivery, enforcement, performance and administration of this Agreement, the other Loan Documents and any such other documents or instrument contemplated hereby or thereby, including any of the foregoing relating to the use of proceeds of the Loans, the violation of, noncompliance with or liability under, any Environmental Law applicable to the operations of the Borrower or any of its Restricted Subsidiaries or any of the property of the Borrower or any of its Restricted Subsidiaries, of any actual or prospective claim, litigation, investigation or proceeding relating to any of the foregoing, whether based on contract, tort or any other theory, whether brought by a third party or by the Borrower or any other Loan Party and regardless of whether any Indemnitee is a party thereto, **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 INDEMNITEE** (all the foregoing in this clause (d), collectively, the "Indemnified Liabilities"), provided that the Borrower shall not have any obligation hereunder to any Agent (or any sub-agent thereof) or any Lender (or any Related Party of any such Agent (or any sub-agent thereof) or Lender) with respect to Indemnified Liabilities arising from (i) the gross negligence or willful misconduct of any such Agent (or any sub-agent thereof) or Lender (or any Related Party of any such Agent (or any sub-agent thereof) or Lender), as the case may be, as determined by a court of competent jurisdiction in a final and non-appealable decision, (ii) a material breach of the Loan Documents by any such Agent (or any sub-agent thereof) or Lender (or any Related Party of any such Agent (or any sub-agent thereof) or Lender), as the case may be, as determined by a court of competent jurisdiction in a final and non-appealable decision or (iii) claims against such Indemnitee or any Related Party brought by any other Indemnitee that do not relate to any action or omission of a Loan Party and do not involve claims against any Agent in its capacity as such. To the fullest extent permitted by applicable law, the Borrower shall not assert, and hereby waives, and acknowledges that no other Person shall have, any claim against any Indemnitee, on any theory of liability, for special, indirect, consequential or punitive damages (as opposed to direct or actual damages) arising out of, in connection with, or as a result of, this Agreement, any other Loan Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Loan or the use of the proceeds thereof. No Indemnitee shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed by it through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Loan Documents or the transactions contemplated hereby or thereby other than for direct or actual damages resulting from the gross negligence or willful misconduct of such Indemnitee as determined by a final and nonappealable judgment of a court of competent jurisdiction. All amounts due under this Subsection 11.5 shall be payable not later than 30 days after written demand therefor. Statements reflecting amounts payable by the Loan Parties pursuant to this Subsection 11.5 shall be submitted to the address of the Borrower set forth in Subsection 11.2, or to such other Person or address

as may be hereafter designated by the Borrower in a notice to the Administrative Agent. Notwithstanding the foregoing, except as provided in Subsections 11.5(b) and (c) above or Subsection 4.11, the Borrower shall have no obligation under this Subsection 11.5 to any Indemnitee with respect to any tax, levy, impost, duty, charge, fee, deduction or withholding imposed, levied, collected, withheld or assessed by any Governmental Authority. The agreements in this Subsection 11.5 shall survive repayment of the Loans and all other amounts payable hereunder.

11.6 Successors and Assigns; Participations and Assignments. (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, except that (i) other than in accordance with Subsection 8.7, the Borrower shall not assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender (and any attempted assignment or transfer by the 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 Subsection 11.6. Nothing in this Agreement, expressed or implied, shall be construed to confer, or shall confer, upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in clause c of this Subsection and, to the extent expressly contemplated hereby, the Related Parties of the Administrative Agent 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 Subsection 11.6(b)(ii) below, any Lender may, in the ordinary course of business and in accordance with applicable law, assign (other than to any natural person) to one or more assignees (each, an "Assignee") all or a portion of its rights and obligations under this Agreement (including its Term Loans, pursuant to an Assignment and Acceptance) with the prior written consent (such consent not to be unreasonably withheld or delayed) of:

(A) the Borrower, provided that no consent of the Borrower shall be required for an assignment (x) to a Lender, an Affiliate of a Lender, or an Approved Fund (as defined below) and (y) if an Event of Default under Subsection 9.1(a) or (f) with respect to the Borrower has occurred and is continuing, to any other Person; provided, further, that the Borrower shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within ten (10) Business Days after having received notice thereof; and

(B) the Administrative Agent (such consent not to be unreasonably withheld); provided that no consent of the Administrative Agent shall be required for an assignment to a Lender or an Affiliate of a Lender or an Approved Fund.

(ii) Assignments shall be subject to the following additional conditions:

(A) except in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund or an assignment of the entire remaining amount of the assigning Lender's Initial Term Loan Commitments, the amount of the Initial Term Loan Commitments or Loans of the assigning Lender subject to each such assignment (determined as of the date the Assignment and Acceptance with respect to such assignment is delivered to the Administrative Agent) shall be in an amount of an integral multiple of $1,000,000 unless the Borrower and the Administrative Agent otherwise consent, provided that (1) no such consent of the Borrower shall be required if an Event of Default under Subsection 9.1(a) or (f) with respect to the Borrower has occurred and is continuing and (2) such amounts shall be aggregated in respect of each Lender and its Affiliates or Approved Funds, if any;

(B) the parties to each assignment shall execute and deliver to the Administrative Agent an Assignment and Acceptance, together with a processing and recordation fee of $3,500 (unless waived by the Administrative Agent in any given case in its sole discretion); provided that for concurrent assignments to two or more Approved Funds such assignment fee shall only be required to be paid once in respect of and at the time of such assignments;

(C) the Assignee, if it shall not be a Lender, shall deliver to the Administrative Agent an administrative questionnaire;

(D) any Term Loans acquired by any Loan Party or any Subsidiary thereof shall be retired and cancelled promptly upon acquisition thereof; and

(E) no assignment shall be made to any Defaulting Lender or any of its Subsidiaries.

For the purposes of this Subsection 11.6, the term "Approved Fund" means any Person (other than a natural person) that is (or will be) engaged in making, purchasing, holding or otherwise investing in commercial loans and similar extensions of credit in the ordinary course of its activities and that is administered or managed by (a) a Lender, (b) an Affiliate of a Lender or (c) an entity or an Affiliate of an entity that administers or manages a Lender.

(iii) Subject to acceptance and recording thereof pursuant to clause (b)(v) below, from and after the effective date specified in each Assignment and Acceptance the Assignee thereunder shall be a party hereto and, to the extent of the interest assigned by such Assignment and Acceptance, 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 Acceptance, be released from its obligations under this Agreement (and, in the case of an Assignment and Acceptance 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 (and bound by any related obligations under) Subsections 4.10, 4.11, 4.12, 4.13 and 11.5, and bound by its continuing obligations under Subsection 11.16); provided, that except to the extent otherwise expressly agreed by the affected parties, no assignment by a Defaulting

Lender will constitute a waiver or release of any claim of any party hereunder arising from that Lender's having been a Defaulting Lender. Any assignment or transfer by a Lender of rights or obligations under this Agreement that does not comply with this Subsection 11.6 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) of this Subsection 11.6.

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

(v) The Borrower hereby designates the Administrative Agent, and the Administrative Agent agrees, to serve as the Borrower's agent, solely for purposes of this Subsection 11.6, to maintain at the Administrative Agent's Office a copy of each Assignment and Acceptance delivered to it and a register for the recordation of the names and addresses of the Lenders, and the Initial Term Loan Commitments of, and interest and principal amount of the Loans owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive absent manifest error, and the Borrower, the Administrative Agent 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 Borrower and any Lender, at any reasonable time and from time to time upon reasonable prior notice.

(vi) Each Lender that sells a participation shall, acting for itself and, solely for this purpose, as an agent of the Borrower, 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 to any Person (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) except to the extent that such disclosure is necessary to establish that such commitment, loan, letter of credit or other obligation is in registered form under Section 5f.103-1(c) of the United States Treasury Regulations. The entries in the Participant Register shall be conclusive absent manifest error, and a 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.

(vii) Upon its receipt of a duly completed Assignment and Acceptance executed by an assigning Lender and an Assignee, the Assignee's completed administrative questionnaire (unless the Assignee shall already be a Lender hereunder), the processing and recordation fee referred to in Subsection 11.6(b) and any written consent to such assignment required by Subsection 11.6(b), the Administrative Agent shall accept such Assignment and Acceptance, record the information contained therein in the Register and give prompt notice of such assignment and recordation to the Borrower. No assignment shall be effective for purposes of this Agreement unless it has been recorded in the Register as provided in this clause (v).

(viii) On or prior to the effective date of any assignment pursuant to this Subsection 11.6(b), the assigning Lender shall surrender any outstanding Notes held by it all or a portion of which are being assigned. Any Notes surrendered by the assigning Lender shall be returned by the Administrative Agent to the Borrower.

Notwithstanding the foregoing provisions of this Subsection 11.6(b) or any other provision of this Agreement, if the Borrower shall have consented thereto in writing in its sole discretion, the Administrative Agent shall have the right, but not the obligation, to effectuate assignments of Loans and Initial Term Loan Commitments via an electronic settlement system acceptable to Administrative Agent and the Borrower as designated in writing from time to time to the Lenders by Administrative Agent (the "Settlement Service"). At any time when the Administrative Agent elects, in its sole discretion, to implement such Settlement Service, each such assignment shall be effected by the assigning Lender and proposed Assignee pursuant to the procedures then in effect under the Settlement Service, which procedures shall be subject to the prior written approval of the Borrower and shall be consistent with the other provisions of this Subsection 11.6(b). Each assigning Lender and proposed Assignee shall comply with the requirements of the Settlement Service in connection with effecting any assignment of Loans and Initial Term Loan Commitments pursuant to the Settlement Service. Assignments and assumptions of Loans and Initial Term Loan Commitments shall be effected by the provisions otherwise set forth herein until the Administrative Agent notifies the Lenders of the Settlement Service as set forth herein. The Borrower may withdraw its consent to the use of the Settlement Service at any time upon notice to the Administrative Agent, and thereafter assignments and assumptions of the Loans and Initial Term Loan Commitments shall be effected by the provisions otherwise set forth herein.

Furthermore, no Assignee, which as of the date of any assignment to it pursuant to this Subsection 11.6(b) would be entitled to receive any greater payment under Subsection 4.10, 4.11, 4.12 or 11.5 than the assigning Lender would have been entitled to receive as of such date under such Subsections with respect to the rights assigned, shall, notwithstanding anything to the contrary in this Agreement, be entitled to receive such greater payments unless the assignment was made after an Event of Default under Subsection 9.1(a) or (f) has occurred and is continuing or the Borrower has expressly consented in writing to waive the benefit of this provision at the time of such assignment.

(c) (i) Any Lender may, in the ordinary course of its business and in accordance with applicable law, without the consent of the Borrower or the Administrative Agent, sell participations (other than to any Defaulting Lender or a natural person) to one or more banks or other entities (a "Participant") in all or a portion of such Lender's rights and obligations under this Agreement (including all or a portion of its Initial Term Loan Commitments and the Loans 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) such Lender shall remain the holder of any such Loan for all purposes under this Agreement and the other Loan Documents and (D) the Borrower, the Administrative Agent and the Lenders shall continue to deal solely and directly with such Lender in connection with such Lender's rights and obligations under this Agreement. For the avoidance of doubt, each Lender shall be responsible for the indemnity under Subsection 10.7(a) without regard to the existence of any participation. Any agreement 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 may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver that (1) requires the consent of each Lender directly affected thereby pursuant to the second proviso to the second sentence of Subsection 11.1(a) and (2) directly affects such Participant. Subject to Subsection 11.6(c)(ii), the Borrower agrees that each Participant shall be entitled to the benefits of (and shall have the related obligations under) Subsections 4.10, 4.11, 4.12, 4.13 and 11.5 to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to Subsection 11.6(b). To the extent permitted by law, each Participant also shall be entitled to the benefits of Subsection 11.7(b) as though it were a Lender, provided that such Participant shall be subject to Subsection 11.7(a) as though it were a Lender.

(ii) No Loan Party shall be obligated to make any greater payment under Subsection 4.10, 4.11 or 11.5 than it would have been obligated to make in the absence of any participation, unless the sale of such participation is made with the prior written consent of the Borrower and the Borrower expressly waives the benefit of this provision at the time of such participation. Any Participant that is not incorporated under the laws of the United States of America or a state thereof shall not be entitled to the benefits of Subsection 4.11 unless such Participant complies with Subsection 4.11(b) and provides the forms and certificates referenced therein to the Lender that granted such participation.

(d) Any Lender, without the consent of the Borrower or the Administrative Agent, may at any time pledge or assign a security interest in all or any portion of its rights under this Agreement to secure obligations of such Lender, including any pledge or assignment to secure obligations to a Federal Reserve Bank, and this Subsection 11.6 shall not apply to any such pledge or assignment of a security interest; provided that no such pledge or assignment of a security interest shall release a Lender from any of its obligations hereunder or substitute (by foreclosure or otherwise) any such pledgee or Assignee for such Lender as a party hereto.

(e) In connection with any assignment or participation made to any Assignee or Participant, the Borrower shall be entitled to request and receive such information and assurances as it may reasonably request from any Lender or any Assignee or Participant to determine whether any filing with any Governmental Authority or qualification of any Loan or Note under the laws of any jurisdiction is required or whether any assignment or participation is otherwise in accordance with applicable law.

(f) Notwithstanding the foregoing provisions of this Subsection 11.6, nothing in this Subsection 11.6 is intended to or should be construed to limit the Borrower's right to prepay the Term Loans as provided hereunder, including under Subsection 4.4.

11.7 Sharing of Payments by Lenders; Set-off. (a) If any Lender shall, by exercising any right of setoff or counterclaim or otherwise, obtain payment in respect of (i) Term Loan Facility Obligations due and payable to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Term Loan Facility Obligations due and payable to such Lender at such time to (y) the aggregate amount of the Term Loan Facility Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time) of payments on account of the Term Loan Facility Obligations due and payable to all Lenders hereunder and under the other Loan Documents at such time obtained by all the Lenders at such time or (ii) Term Loan Facility Obligations owing (but not due and payable) to such Lender hereunder and under the other Loan Documents at such time in excess of its ratable share (according to the proportion of (x) the amount of such Term Loan Facility Obligations owing (but not due and payable) to such Lender at such time to (y) the aggregate amount of the Term Loan Facility Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Parties at such time) of payment on account of the Term Loan Facility Obligations owing (but not due and payable) to all Lenders hereunder and under the other Loan Documents at such time obtained by all of the Lenders at such time then the Lender receiving such greater proportion shall (A) notify the Administrative Agent of such fact, and (B) purchase (for cash at face value) participations in the Loans of the other Lenders, or make such other adjustments as shall be equitable, so that the benefit of all such payments shall be shared by the Lenders ratably in accordance with the aggregate amount of Term Loan Facility Obligations then due and payable to the Lenders or owing (but not due and payable) to the Lenders, as the case may be, provided that:

(i) if any such participations or subparticipations are purchased and all or any portion of the payment giving rise thereto is recovered, such participations

or subparticipations shall be rescinded and the purchase price restored to the extent of such recovery, without interest; and

(ii) the provisions of this Subsection shall not be construed to apply to (A) any payment made by or on behalf of the Borrower pursuant to and in accordance with the express terms of this Agreement (including the application of funds arising from the existence of a Defaulting Lender) or (B) any payment obtained by a Lender as consideration for the assignment of or sale of a participation in any of its Loans any assignee or participant, other than an assignment to the Borrower or any Affiliate thereof (as to which the provisions of this Subsection shall apply).

Each Loan Party 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 any Loan Party rights of setoff and counterclaim with respect to such participation as fully as if such Lender were a direct creditor of such Loan Party in the amount of such participation.

(b) In addition to any rights and remedies of the Lenders provided by law, each Lender shall have the right, without prior notice to the Borrower, any such notice being expressly waived by the Borrower to the extent permitted by applicable law, upon the occurrence of an Event of Default to set-off and appropriate and apply against any amount then due and payable by the Borrower any and all deposits (general or special, time or demand, provisional or final), in any currency, and any other credits, indebtedness or claims, in any currency, in each case whether direct or indirect, absolute or contingent, matured or unmatured, at any time held or owing by such Lender or any branch or agency thereof to or for the credit or the account of the Borrower or any Loan Party; provided, that in the event that any Defaulting Lender shall exercise any such right of setoff, (x) all amounts so set off shall be paid over immediately to the Administrative Agent for further application in accordance with the provisions of Subsection 2.9 and, pending such payment, shall be segregated by such Defaulting Lender from its other funds and deemed held in trust for the benefit of the Administrative Agent and the Lenders, and (y) the Defaulting Lender shall provide promptly to the Administrative Agent a statement describing in reasonable detail the Obligations owing to such Defaulting Lender as to which it exercised such right of setoff. Each Lender agrees promptly to notify the Borrower and the Administrative Agent after any such set-off and application made by such Lender, provided that the failure to give such notice shall not affect the validity of such set-off and application.

11.8 Judgment. (a) The obligations of the Loan Parties hereunder and under the other Loan Documents to make payments in a specified currency (the "Obligation Currency") shall not be discharged or satisfied by any tender or recovery pursuant to any judgment expressed in or converted into any currency other than the Obligation Currency, except to the extent that such tender or recovery results in the effective receipt by a Loan Party of the full amount of the Obligation Currency expressed to be payable to it under this Agreement or another Loan Document. If, for the purpose of obtaining or enforcing judgment against any Loan Party in any court in any jurisdiction, it becomes necessary to convert into any other currency other than the Obligation Currency (such other currency being hereinafter in this Subsection 11.8 referred to as the "Judgment Currency") an amount due in the Obligation Currency, the conversion shall be made at the

rate of exchange prevailing on the Business Day immediately preceding the date of actual payment of the amount due, in the case of any proceeding in the courts of any other jurisdiction that will give effect to such conversion being made on such date, or the date on which the judgment is given, in the case of any proceeding in the courts of any other jurisdiction (the applicable date as of which such conversion is made pursuant to this Subsection 11.8 being hereinafter in this Subsection 11.8 referred to as the "Judgment Conversion Date").

(b) If, in the case of any proceeding in the court of any jurisdiction referred to in Subsection 11.8(a), there is a change in the rate of exchange prevailing between the Judgment Conversion Date and the date of actual receipt for value of the amount due, the applicable Loan Party shall pay such additional amount (if any, but in any event not a lesser amount) as may be necessary to ensure that the amount actually received in the Judgment Currency, when converted at the rate of exchange prevailing on the date of payment, will produce the amount of the Obligation Currency that could have been purchased with the amount of the Judgment Currency stipulated in the judgment or judicial order at the rate of exchange prevailing on the Judgment Conversion Date. Any amount due from any Loan Party under this Subsection 11.8(b) shall be due as a separate debt and shall not be affected by judgment being obtained for any other amounts due under or in respect of any of the Loan Documents.

(c) The term "rate of exchange" in this Subsection 11.8 means the rate of exchange at which the Administrative Agent, on the relevant date at or about 12:00 noon (New York time), would be prepared to sell, in accordance with its normal course foreign currency exchange practices, the Obligation Currency against the Judgment Currency.

11.9 Counterparts. This Agreement may be executed by one or more of the parties to this Agreement on any number of separate counterparts (including by telecopy), and all of such counterparts taken together shall be deemed to constitute one and the same instrument. A set of the copies of this Agreement signed by all the parties shall be delivered to the Borrower and the Administrative Agent.

11.10 Severability. If any provision of this Agreement or the other Loan Documents is held to be illegal, invalid or unenforceable, (i) the legality, validity and enforceability of the remaining provisions of this Agreement and the other Loan Documents shall not be affected or impaired thereby and (ii) the parties shall endeavor in good faith negotiations to replace the illegal, invalid or unenforceable provisions with valid provisions the economic effect of which comes as close as possible to that of the illegal, invalid or unenforceable provisions. The invalidity of a provision in a particular jurisdiction shall not invalidate or render unenforceable such provision in any other jurisdiction. Without limiting the foregoing provisions of this Subsection 11.10, if and to the extent that the enforceability of any provisions in this Agreement relating to Defaulting Lenders shall be limited by Debtor Relief Laws, as determined in good faith by the Administrative Agent, then such provisions shall be deemed to be in effect only to the extent not so limited.

11.11 Integration. This Agreement and the other Loan Documents represent the entire agreement of each of the Loan Parties party hereto, the Administrative

Agent and the Lenders with respect to the subject matter hereof, and there are no promises, undertakings, representations or warranties by any of the Loan Parties party hereto, the Administrative Agent or any Lender relative to the subject matter hereof not expressly set forth or referred to herein or in the other Loan Documents. This Agreement and the other Loan Documents supersede any and all previous agreements and understandings, oral or written, relating to the matters hereof.

11.12 Governing Law. THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS AND ANY CLAIMS, CONTROVERSY, DISPUTE OR CAUSE OF ACTION (WHETHER IN CONTRACT OR TORT OR OTHERWISE) BASED UPON, ARISING OUT OF OR RELATING TO THIS AGREEMENT OR ANY OTHER LOAN DOCUMENT (EXCEPT, AS TO ANY OTHER LOAN DOCUMENT, AS EXPRESSLY SET FORTH THEREIN) AND THE TRANSACTIONS CONTEMPLATED HEREBY AND THEREBY SHALL BE GOVERNED BY, AND CONSTRUED IN ACCORDANCE WITH, THE LAW OF THE STATE OF NEW YORK, WITHOUT GIVING EFFECT TO ITS PRINCIPLES OR RULES OF CONFLICT OF LAWS TO THE EXTENT SUCH PRINCIPLES OR RULES ARE NOT MANDATORILY APPLICABLE BY STATUTE AND WOULD REQUIRE OR PERMIT THE APPLICATION OF THE LAWS OF ANOTHER JURISDICTION.

11.13 Submission to Jurisdiction; Waivers. Each party hereto hereby irrevocably and unconditionally:

(a) submits for itself and its property in any legal action or proceeding relating to this Agreement and the other Loan Documents to which it is a party to the exclusive general jurisdiction of the Supreme Court of the State of New York for the County of New York (the "New York Supreme Court"), and the United States District Court for the Southern District of New York (the "Federal District Court", and together with the New York Supreme Court, the "New York Courts") and appellate courts from either of them; provided that nothing in this Agreement shall be deemed or operate to preclude (i) any Agent from bringing suit or taking other legal action in any other jurisdiction to realize on the Collateral or any other security for the Term Loan Facility Obligations (in which case any party shall be entitled to assert any claim or defense, including any claim or defense that this Subsection 11.13 would otherwise require to be asserted in a legal action or proceeding in a New York Court), or to enforce a judgment or other court order in favor of the Administrative Agent or the Collateral Agent, (ii) any party from bringing any legal action or proceeding in any jurisdiction for the recognition and enforcement of any judgment and (iii) if all such New York Courts decline jurisdiction over any Person, or decline (or in the case of the Federal District Court, lack) jurisdiction over any subject matter of such action or proceeding, a legal action or proceeding may be brought with respect thereto in another court having jurisdiction.

(b) consents that any such action or proceeding may be brought in such courts and waives any objection that it may now or hereafter have to the venue of any such action or proceeding in any such court or that such action or proceeding was brought in an inconvenient forum and agrees not to plead or claim the same;

(c) agrees that service of process in any such action or proceeding may be effected by mailing a copy thereof by registered or certified mail (or any substantially similar form of mail), postage prepaid, to the Borrower, the applicable Lender or the Administrative Agent, as the case may be, at the address specified in Subsection 11.2 or at such other address of which the Administrative Agent, any such Lender and the Borrower shall have been notified pursuant thereto;

(d) agrees that nothing herein shall affect the right to effect service of process in any other manner permitted by law or (subject to clause (a) above) shall limit the right to sue in any other jurisdiction; and

(e) waives, to the maximum extent not prohibited by law, any right it may have to claim or recover in any legal action or proceeding referred to in this Subsection 11.13 any consequential or punitive damages.

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

(b) The Borrower agrees that the relationship between the Administrative Agent and the Borrower and between each Lender and the Borrower is that of creditor and debtor and not that of partners or joint venturers. This Agreement does not

constitute a partnership agreement or any other association between the Administrative Agent and the Borrower or between any Lender and the Borrower. The Borrower acknowledges that the Administrative Agent and each Lender has acted at all times only as a creditor to the Borrower within the normal and usual scope of the activities normally undertaken by a creditor and in no event has the Administrative Agent or any Lender attempted to exercise any control over the Borrower or its business or affairs. The Borrower further acknowledges that as of the date hereof the Administrative Agent and each Lender has not taken or failed to take any action under or in connection with its respective rights under the Credit Agreement or any of the other Loan Documents that in any way, or to any extent, has interfered with or adversely affected the Borrower's ownership of Collateral.

11.15 Waiver Of Jury Trial. EACH OF THE BORROWER, THE AGENTS AND THE LENDERS HEREBY IRREVOCABLY AND UNCONDITIONALLY WAIVES TRIAL BY JURY IN ANY LEGAL ACTION OR PROCEEDING RELATING TO THIS AGREEMENT OR ANY NOTES OR ANY OTHER LOAN DOCUMENT AND FOR ANY COUNTERCLAIM THEREIN. EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PERSON HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PERSON WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT AND THE OTHER LOAN DOCUMENTS BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION.

11.16 Confidentiality. (a) Each Agent and each Lender agrees to maintain the confidentiality of the Information (as defined below), except that Information may be disclosed: (i) to any Agent or any other Lender, (ii) to any Transferee, or prospective Transferee or any creditor or any actual or prospective counterparty (or its advisors) to any swap or derivative transaction relating to the Borrower and its obligations which agrees to comply with the provisions of this Subsection 11.16 pursuant to a written instrument (or electronically recorded agreement from any Person listed above in this clause (ii), in respect to any electronic Information (whether posted or otherwise distributed on any Platform)) for the benefit of the Borrower (it being understood that each relevant Lender shall be solely responsible for obtaining such instrument (or such electronically recorded agreement)), (iii) to its Affiliates and the employees, officers, partners, directors, agents, attorneys, accountants and other professional advisors of it and its Affiliates, provided that such Lender shall inform each such Person of the agreement under this Subsection 11.16 and take reasonable actions to cause compliance by any such Person referred to in this clause (iii) with this agreement (including, where appropriate, to cause any such Person to acknowledge its agreement to be bound by the agreement under this Subsection 11.16), (iv) upon the request or demand of any Governmental Authority having jurisdiction over such Lender or its affiliates or to the extent required in response to any order of any court or other Governmental Authority or as shall otherwise be required pursuant to any Requirement of Law, provided that, other than with respect to any disclosure to any bank regulatory authority, such Lender shall, unless prohibited by any Requirement of Law, notify the Borrower of any disclosure pursuant to this clause (iv) as

far in advance as is reasonably practicable under such circumstances, (v) which has been publicly disclosed other than in breach of this Agreement, (vi) in connection with the exercise of any remedy hereunder, under any Loan Document or under any Interest Rate Agreement, (vii) in connection with periodic regulatory examinations and reviews conducted by the National Association of Insurance Commissioners or any Governmental Authority having jurisdiction over such Lender or its affiliates (to the extent applicable), (viii) in connection with any litigation to which such Lender (or, with respect to any Interest Rate Agreement, any Affiliate of any Lender party thereto) may be a party subject to the proviso in clause (iv) above, (ix) if, prior to such Information having been so provided or obtained, such Information was already in an Agent's or a Lender's possession on a non-confidential basis without a duty of confidentiality to the Borrower being violated, (x) to any other party hereto, and (xi) with the consent of the Borrower. In addition, the Administrative Agent may disclose (i) the existence of this Agreement, the global amount, currency and maturity date of any Facility hereunder, and the legal name, country of domicile and jurisdiction of organization of the Borrower, to (i) the CUSIP Bureau and other similar market data collectors or service providers to the lending industry, provided that either such information shall have been previously made publicly available by the Borrower, or the Administrative Agent shall have obtained the written consent of the Borrower (such consent not to be unreasonably withheld or delayed), prior to making such disclosure, and (ii) information about this Agreement to service providers to the Administrative Agent to the extent customary in connection with the administration and management of this Agreement, the other Loan Documents, the Initial Term Loan Commitments and the Loans, provided that any such Person is advised of and agrees to be bound by the provisions of this Subsection 11.16 and the Administrative Agent takes reasonable actions to cause such Person to comply herewith. Notwithstanding any other provision of this Agreement, any other Loan Document or any Assignment and Acceptance, the provisions of this Subsection 11.16 shall survive with respect to each Agent and Lender until the second anniversary of such Agent or Lender ceasing to be an Agent or a Lender, respectively. For purposes of this Section, "Information" means all information provided to any Agent or Lender by or on behalf of the Borrower or any Subsidiary relating to the Borrower or any Subsidiary or any of their respective businesses, other than any such information that is available to the Administrative Agent or, any Lender on a nonconfidential basis prior to disclosure by the Borrower or any Subsidiary. Any Person required to maintain the confidentiality of Information as provided in this Subsection shall be considered to have complied with its obligation to do so if such Person has exercised the same degree of care to maintain the confidentiality of such Information as such Person would accord to its own confidential information.

(b) Each Lender acknowledges that any such information referred to in Subsection 11.16(a), and any information (including requests for waivers and amendments) furnished by the Borrower or the Administrative Agent pursuant to or in connection with this Agreement and the other Loan Documents, may include material non-public information concerning the Borrower, the other Loan Parties and their respective Affiliates or their respective securities. Each Lender represents and confirms that such Lender has developed compliance procedures regarding the use of material non-public information; that such Lender will handle such material non-public information in accordance with those procedures and applicable law, including United States federal and state securities laws; and that such Lender has identified to

the Administrative Agent a credit contact who may receive information that may contain material non-public information in accordance with its compliance procedures and applicable law.

11.17 Additional Indebtedness. In connection with the Incurrence by any Loan Party or any Subsidiary thereof of any Additional Indebtedness, each of the Administrative Agent and the Collateral Agent agree to execute and deliver the Subordinated Notes Intercreditor Agreement or any Other Intercreditor Agreement or any Intercreditor Agreement Supplement and amendments, amendments and restatements, restatements or waivers of or supplements to or other modifications to, any Security Document (including but not limited to any Mortgages and UCC fixture filings), and to make or consent to any filings or take any other actions in connection therewith, as may be reasonably deemed by the Borrower to be necessary or reasonably desirable for any Lien on the assets of any Loan Party permitted to secure such Additional Indebtedness to become a valid, perfected lien (with such priority as may be designated by the relevant Loan Party or Subsidiary, to the extent such priority is permitted by the Loan Documents) pursuant to the Security Document being so amended, amended and restated, restated, waived, supplemented or otherwise modified or otherwise, in each case to the extent consistent with the provisions of this Agreement.

11.18 USA Patriot Act Notice. Each Lender hereby notifies the Borrower that pursuant to the requirements of the USA Patriot Act (Title III of Pub.L. 107-56 (signed into law October 26, 2001)) (the "Patriot Act"), it is required to obtain, verify, and record information that identifies the Borrower, which information includes the name and address of the Borrower and other information that will allow such Lender to identify the Borrower in accordance with the Patriot Act. The Borrower shall, promptly following a request by the Administrative Agent or any Lender, provide all documentation and other information that the Administrative Agent or such Lender requests in order to comply with its ongoing obligations under applicable "know your customer" an anti-money laundering rules and regulations, including the Patriot Act.

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

11.20 Reinstatement. This Agreement shall remain in full force and effect and continue to be effective should any petition or other proceeding be filed by or against any Loan Party for liquidation or reorganization, should any Loan Party become insolvent or make an assignment for the benefit of any creditor or creditors or should an

interim receiver, receiver, receiver and manager or trustee be appointed for all or any significant part of any Loan Party's assets, and shall continue to be effective or to be reinstated, as the case may be, if at any time payment and performance of the obligations of the Borrower under the Loan Documents, or any part thereof, is, pursuant to applicable law, rescinded or reduced in amount, or must otherwise be restored or returned by any obligee of the obligations, whether as a fraudulent preference, reviewable transaction or otherwise, all as though such payment or performance had not been made. In the event that any payment, or any part thereof, is rescinded, reduced, restored or returned, the obligations of the Borrower hereunder shall be reinstated and deemed reduced only by such amount paid and not so rescinded, reduced, restored or returned.

[SIGNATURE PAGES FOLLOW]

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

BOOMERANG TUBE, LLC

By:_____
Name:
Title:

AGENT AND LENDERS:

CORTLAND CAPITAL MARKET SERVICES LLC
as Administrative Agent and Collateral Agent

By:_____
Name:
Title:

[_____],
as Lender

By:_____
Name:
Title:

By:_____
Name:
Title:

[_____],
as Lender

By:_____
Name:
Title:

By:_____
Name:
Title:

EXHIBIT 16

Subordinated Notes Intercreditor Agreement

SUBORDINATION AND INTERCREDITOR AGREEMENT

THIS SUBORDINATION AND INTERCREDITOR AGREEMENT (this "Agreement") is entered into as of this October ___, 2015, by and among CORTLAND CAPITAL MARKET SERVICES, LLC in its capacity as agent for all Subordinated Lenders (as hereinafter defined) party to the Subordinated Credit Agreement described below ("Subordinated Agent"), BOOMERANG TUBE, LLC, a Delaware limited liability company ("Borrower"), those certain subsidiaries of Borrower from time to time party to the Senior Debt Documents (as hereinafter defined) (together with Borrower, collectively, the "Companies", and individually a "Company"), WELLS FARGO CAPITAL FINANCE, LLC, as Working Capital Agent (as hereinafter defined) and CORTLAND CAPITAL MARKET SERVICES, LLC, as Term Loan Agent (as hereinafter defined).

R E C I T A L S

A. Borrower, Working Capital Agent and Working Capital Lenders (as hereinafter defined) have entered into a Credit Agreement of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time (the "Working Capital Credit Agreement") pursuant to which, among other things, Working Capital Lenders have agreed, subject to the terms and conditions set forth in the Working Capital Credit Agreement, to make certain loans and financial accommodations to Borrower. All of Borrower's obligations to Working Capital Agent and Working Capital Lenders under the Working Capital Credit Agreement and the other Working Capital Debt Documents (as hereinafter defined) are joint and several and are secured by liens on and security interests in the Collateral (as hereinafter defined).

B. Borrower may from time to time obtain Bank Products (as hereinafter defined) and become liable for the Bank Product Obligations (as hereinafter defined) secured by liens and security interests in the Collateral.

C. The Companies, Term Loan Agent and Term Loan Lenders (as hereinafter defined) have entered into a Term Credit Agreement of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time, the "Term Loan Credit Agreement") pursuant to which Term Loan Lenders are extending credit to the Companies. All of the Companies' obligations to Term Loan Lenders under the Term Loan Credit Agreement and the other Term Loan Debt Documents (as hereinafter defined) are joint and several and are secured by liens on and security interests in the Collateral.

D. The Companies and Subordinated Agent have entered into a Subordinated Credit Agreement of even date herewith (as the same may be amended, supplemented or otherwise modified from time to time as permitted hereunder, the "Subordinated Credit Agreement") pursuant to which Subordinated Lenders are extending credit to the Companies as evidenced by a Subordinated Promissory Note of even date herewith in the principal amount of $55,000,000 (as the same may be amended, supplemented or otherwise modified from time to time as permitted hereunder, the "Subordinated Note"). All of the Companies' obligations to Subordinated Creditors (as hereinafter defined) under the Subordinated Note and the other Subordinated Debt

Documents (as hereinafter defined) are joint and several and are secured by liens on and security interests in the Collateral.

E. As an inducement to and as one of the conditions precedent to (i) the agreement of Working Capital Agent and Working Capital Lenders to consummate the transactions contemplated by the Working Capital Credit Agreement and (ii) the agreement of Term Loan Agent and Term Loan Lenders to consummate the transactions contemplated by the Term Loan Credit Agreement, Working Capital Agent, Working Capital Lenders, Term Loan Agent and Term Loan Lenders have required the execution and delivery of this Agreement by Subordinated Agent (for itself and on behalf of all Subordinated Lenders) and the Companies in order to set forth the relative rights and priorities of Senior Creditors (as hereinafter defined) and Subordinated Creditors under the Senior Debt Documents and the Subordinated Debt Documents.

NOW, THEREFORE, in order to induce Senior Creditors to consummate the transactions contemplated by the Working Capital Credit Agreement, and for other good and valuable consideration, the receipt and sufficiency of which hereby are acknowledged, the parties hereto hereby agree as follows:

1. **Definitions**. The following terms shall have the following meanings in this Agreement:

> "Affiliate" means, as applied to any Person, any other Person who controls, is controlled by, or is under common control with, such Person. For purposes of this definition, "control" means the possession, directly or indirectly through one or more intermediaries, of the power to direct the management and policies of a Person, whether through the ownership of equity interests, by contract, or otherwise; provided, however, that (a) any Person which owns directly or indirectly 10% or more of the equity interests having ordinary voting power for the election of directors or other members of the governing body of a Person or 10% or more of the partnership or other ownership interests of a Person (other than as a limited partner of such Person) shall be deemed an Affiliate of such Person, and (b) each partnership in which a Person is a general partner shall be deemed an Affiliate of such Person.
>
> "Bank Product" shall mean any financial accommodation extended to a Company or any of its subsidiaries by a Bank Product Provider including: (a) credit cards, (b) credit card processing services, (c) debit cards, (d) purchase cards, (e) ACH transactions, (f) cash management, including controlled disbursement, accounts or services, or (g) interest rate, credit, commodity or equity swap, cap, floor, collar, forward foreign exchange transaction, currency swap, cross currency rate swap, currency option, or any combination of, or option with respect to, these or similar transactions, for the purpose of hedging exposure to fluctuations in interest or exchange rates, loan, credit exchange, security, or currency valuations or commodity prices.

"Bank Product Documents" shall mean those agreements entered into from time to time by a Company or any of its subsidiaries with a Bank Product Provider in connection with the obtaining of any of the Bank Products.

"Bank Product Obligations" shall mean all obligations, liabilities, contingent reimbursement obligations, fees, and expenses owing by a Company or any of its subsidiaries to any Bank Product Provider pursuant to or evidenced by the Bank Product Documents and irrespective of whether for the payment of money, whether direct or indirect, absolute or contingent, due or to become due, now existing or hereafter arising, and including all such amounts that a Company or any of its subsidiaries are obligated to reimburse to a Senior Agent or any Senior Lender as a result of Senior Agent or such Senior Lender purchasing participations from, or executing indemnities or reimbursement obligations to, a Bank Product Provider with respect to the Bank Products provided by such Bank Product Provider to a Company or any of its subsidiaries.

"Bank Product Provider" shall mean Wells Fargo Bank, National Association, either Senior Agent, any Affiliate of a Senior Agent, any Senior Lender or any Affiliate of any Senior Lender.

"Bankruptcy Code" shall mean chapter 11 of Title 11 of the United States Code, as amended from time to time and any successor statute and all rules and regulations promulgated thereunder.

"Collateral" shall mean all of the existing or hereafter acquired property, whether real, personal or mixed, of each Company with respect to which a lien has been obtained, granted or purported to be granted as security for any Senior Debt or Subordinated Debt.

"Disposition" shall mean, with respect to any interest in property, the sale, lease, license or other disposition of such interest in such property.

"Distribution" shall mean, with respect to any indebtedness or obligation, (a) any payment or distribution by any Person of cash, securities or other property, by set-off or otherwise, on account of such indebtedness or obligation, or (b) any redemption, purchase or other acquisition of such indebtedness or obligation by any Person.

"Enforcement Action" shall mean (a) to take or receive from or for the account of any Company or any guarantor of the Subordinated Debt, by set-off or in any other manner, the whole or any part of any moneys which may now or hereafter be owing by any Company or any such guarantor with respect to the Subordinated Debt, (b) to initiate or participate with others in any suit, action or proceeding against any Company or any such guarantor to (i) to sue for or enforce payment of the whole or any part of the Subordinated Debt, (ii) commence or join with other Persons to commence a Proceeding with respect to any Company or any guarantor of the Senior Debt, or (iii) commence judicial enforcement of any

of the rights and remedies under the Subordinated Debt Documents or applicable law with respect to the Subordinated Debt, (c) to accelerate the Subordinated Debt, (d) to take any action to enforce any rights or remedies with respect to the Subordinated Debt, (e) to exercise any put option or to cause any Company or any guarantor of the Senior Debt to honor any redemption or mandatory prepayment obligation under any Subordinated Debt Document or (f) to exercise any rights or remedies of a secured party under the Subordinated Debt Documents or applicable law or take any action under the provisions of any state or federal law, including, without limitation, the Uniform Commercial Code, or under any contract or agreement, to enforce, foreclose upon, take possession of or sell any property or assets of any Company or any guarantor of the Senior Debt.

"Initial Working Capital Loan Documents" shall mean the Working Capital Credit Agreement, all "Loan Documents" as defined therein, and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

"Initial Term Loan Documents" shall mean the Term Loan Credit Agreement, all "[**Loan Documents**]" as defined therein, and all other agreements, documents and instruments executed from time to time in connection therewith, as the same may be amended, supplemented or otherwise modified from time to time.

"Paid in Full," "Payment in Full," "paid in full" or "payment in full" shall mean, as of any date of determination with respect to the Working Capital Debt and/or Term Loan Debt, as the case may be and subject to Section 5, that: (a) all of such Senior Debt (other than (i) contingent indemnification obligations not yet due and payable or with respect to which a claim has not been asserted, (ii) with respect to the Working Capital Debt, obligations not yet due and payable with respect to letters of credit issued pursuant to the Working Capital Debt Documents (it being understood that such obligations include interest, fees, charges, costs and expenses that accrue subsequent to such date of determination in respect of undrawn or drawn letters of credit) and (iii) Bank Product Obligations not yet due and payable) has been paid in full in cash, (b) no Person has any further right to obtain any loans, letters of credit or other extensions of credit under the applicable Senior Debt Documents, (c) with respect to the Working Capital Debt, any and all letters of credit issued under the Working Capital Debt Documents have been cancelled and returned (or backed by standby letters of credit (issued by a bank, and in form and substance, acceptable to Working Capital Agent) or cash collateralized, in each case in an amount equal to 105% of the face amount of such letters of credit in accordance with the terms of such documents), (d) any and all Bank Product Obligations have been cancelled (or backed by standby letters of credit (issued by a bank, and in form and substance, acceptable to the applicable Senior Agent) or cash collateralized, in each case in an amount reasonably determined by the applicable Senior Agent as sufficient to satisfy the estimated credit exposure with respect to the Bank Product

Obligations), and (e) any costs, expenses and contingent indemnification obligations which are not yet due and payable but with respect to which a claim may reasonably be expected to be asserted by the applicable Senior Agent or an applicable Senior Lender, are backed by standby letters of credit (issued by a bank, and in form and substance, acceptable to the applicable Senior Agent) or cash collateralized, in each case in an amount reasonably estimated by the applicable Senior Agent to be the amount of costs, expenses and contingent indemnification obligations that may become due and payable.

"Permitted Refinancing" shall mean (i) any refinancing or replacement of the Working Capital Debt under the Initial Working Capital Loan Documents (or any Permitted Refinancing Working Capital Debt Documents) or (ii) any refinancing or replacement of the Term Loan Debt under the Initial Term Loan Documents (or any Permitted Refinancing Term Loan Debt Documents).

"Permitted Refinancing Working Capital Debt Documents" shall mean any financing documentation which replaces the Initial Working Capital Loan Documents (or any Permitted Refinancing Working Capital Debt Documents) and pursuant to which the Working Capital Debt under the Initial Working Capital Loan Documents (or any Permitted Refinancing Working Capital Debt Documents) is refinanced or replaced, whether by the same or any other agent, lender or group of lenders, as such financing documentation may be amended, supplemented or otherwise modified from time to time in compliance with this Agreement.

"Permitted Refinancing Term Loan Debt Documents" shall mean any financing documentation which replaces the Initial Term Loan Documents (or any Permitted Refinancing Term Loan Debt Documents) and pursuant to which the Term Loan Debt under the Initial Term Loan Documents (or any Permitted Refinancing Term Loan Debt Documents) is refinanced or replaced, whether by the same or any other agent, lender or group of lenders, as such financing documentation may be amended, supplemented or otherwise modified from time to time in compliance with this Agreement.

"Permitted Subordinated Debt Payments" shall mean (a) payments of regularly scheduled payments of interest on the Subordinated Debt due and payable on a non-accelerated basis in accordance with the terms of the Subordinated Debt Documents as in effect on the date hereof or as modified in accordance with the terms of this Agreement that are permitted to be made by the Companies under Section 6.7(a)(iii) of the Working Capital Credit Agreement and Section 8.2(a)(v) of the Term Loan Credit Agreement, and (b) payments made solely with Stock (as defined in the Working Capital Credit Agreement as in effect on the date hereof) (other than Prohibited Preferred Stock (as defined in the Working Capital Credit Agreement as in effect on the date hereof)) of Borrower or New Holdings.

"Person" shall mean any natural person, corporation, general or limited partnership, limited liability company, firm, trust, association, government, governmental agency or other entity, whether acting in an individual, fiduciary or other capacity.

"Primary Agent" shall mean (i) with respect to the Working Capital Priority Collateral, if the Working Capital Debt is not Paid in Full, the Working Capital Agent, and (ii) with respect to the Term Loan Priority Collateral, if the Term Loan Debt is not Paid in Full, the Term Loan Agent.

"Proceeding" shall mean any voluntary or involuntary insolvency, bankruptcy, receivership, custodianship, liquidation, dissolution, reorganization, assignment for the benefit of creditors, appointment of a custodian, receiver, trustee or other officer with similar powers or any other proceeding for the liquidation, dissolution or other winding up of a Person.

"Reorganization Subordinated Securities" shall mean (i) any equity securities (other than Prohibited Preferred Stock (as defined in the Working Capital Credit Agreement as in effect on the date hereof)) (a) on which Subordinated Creditors may not receive any dividends or other distributions in respect of such equity securities except in accordance with the terms of Section 6.9 of the Initial Working Capital Credit Agreement, and (b) if such equity securities are preferred securities, are not Prohibited Preferred Stock), and (ii) notes or other debt securities issued in substitution of all or any portion of the Subordinated Debt that are (a) subordinated in right of payment to the Senior Debt (or any notes or other debt securities issued in substitution of all or any portion of the Senior Debt) at least to the same extent that the Subordinated Debt is subordinated to the Senior Debt pursuant to the terms of this Agreement, (b) do not have the benefit of any obligation of any Person (whether as issuer, guarantor or otherwise) unless the Senior Debt (or any notes or other debt securities issued in substitution of all or any portion of the Senior Debt) has at least the same benefit of the obligation of such Person and (c) do not have any terms, and are not subject to or entitled to the benefit of any agreement or instrument that has terms, that are more burdensome to the issuer of or other obligor on such notes or other debt securities than the terms of the Senior Debt (or any notes or other debt securities issued in substitution of all or any portion of the Senior Debt).

"Senior Agent" shall mean the Working Capital Agent and/or the Term Loan Agent, as the context requires.

"Senior Creditors" shall mean the Working Capital Creditors and/or the Term Loan Creditors, as the context requires.

"Senior Debt" shall mean the Working Capital Debt and/or the Term Loan Debt, as the context requires.

"Senior Debt Documents" shall mean the Working Capital Debt Documents and/or the Term Loan Debt Documents, as the context requires.

"Senior Default" shall mean a Working Capital Default and/or a Term Loan Default, as the context requires.

"Senior Intercreditor Agreement" shall mean, that certain Intercreditor Agreement dated as of the date hereof, by and among Senior Agents and Companies, as the same may be amended, supplemented or otherwise modified from time to time.

"Senior Lenders" shall mean the Working Capital Lenders and/or the Term Loan Lenders, as the context requires.

"Subordinated Creditors" shall mean, collectively, the Subordinated Agent and the Subordinated Lenders.

"Subordinated Debt" shall mean all of the obligations of the Companies to Subordinated Creditors evidenced by or incurred pursuant to the Subordinated Debt Documents.

"Subordinated Debt Documents" shall mean the Subordinated Note, the Subordinated Credit Agreement, any guaranty with respect to the Subordinated Debt, and all other documents, agreements and instruments now existing or hereinafter entered into in connection therewith, all as amended, supplemented, or otherwise modified from time to time in accordance with this Agreement.

"Subordinated Lenders" shall mean the holders of the Subordinated Debt.

"Term Loan Agent" shall mean Cortland Capital Market Services, LLC, as Agent for the Term Loan Lenders and the Bank Product Providers associated with the Term Loan Debt, or any other Person appointed by the holders of the Term Loan Debt as administrative agent for purposes of the Term Loan Debt Documents and this Agreement.

"Term Loan Creditors" shall mean, collectively, the Term Loan Agent and the Term Loan Lenders.

"Term Loan Debt" shall mean (a) all obligations, liabilities and indebtedness of every nature of the Companies from time to time owed to Term Loan Agent or any Term Loan Lender under the Term Loan Debt Documents, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code together with any interest, fees, costs and expenses accruing thereon after the commencement of a

Proceeding, without regard to whether or not such interest, fees, costs and expenses are allowed and (b) all Bank Product Obligations .

"Term Loan Debt Documents" shall mean the Initial Term Loan Documents and, after the consummation of any Permitted Refinancing, the Permitted Refinancing Term Loan Debt Documents.

"Term Loan Default" shall mean any "Event of Default" under the Term Loan Debt Documents.

"Term Loan Lenders" shall mean the holders of the Term Loan Debt.

"Working Capital Agent" shall mean Wells Fargo Capital Finance, LLC, as Agent for the Working Capital Lenders and the Bank Product Providers associated with the Working Capital Debt, or any other Person appointed by the holders of the Working Capital Debt as administrative agent for purposes of the Working Capital Debt Documents and this Agreement.

"Working Capital Creditors" shall mean, collectively, the Working Capital Agent the Working Capital Lenders, and Bank Product Providers.

"Working Capital Debt" shall mean (a) all obligations, liabilities and indebtedness of every nature of the Companies from time to time owed to Working Capital Agent or any Working Capital Lender under the Working Capital Debt Documents, including, without limitation, the principal amount of all debts, claims and indebtedness, accrued and unpaid interest and all fees, costs and expenses, whether primary, secondary, direct, contingent, fixed or otherwise, heretofore, now and from time to time hereafter owing, due or payable, whether before or after the filing of a Proceeding under the Bankruptcy Code together with any interest, fees, costs and expenses accruing thereon after the commencement of a Proceeding, without regard to whether or not such interest, fees, costs and expenses are allowed, and (b) all Bank Product Obligations. Working Capital Debt shall be considered to be outstanding whenever any loan commitment under the Working Capital Debt Document is outstanding.

"Working Capital Debt Documents" shall mean the Initial Working Capital Loan Documents and, after the consummation of any Permitted Refinancing, the Permitted Refinancing Working Capital Debt Documents.

"Working Capital Default" shall mean any "Event of Default" under the Working Capital Debt Documents.

"Working Capital Lenders" shall mean the holders of the Working Capital Debt.

2. **Subordination**.

2.1. Subordination of Subordinated Debt to Senior Debt. Subject to Section 2.3, each Company covenants and agrees, and Subordinated Creditors by acceptance of the Subordinated Debt Documents (whether upon original issue or upon transfer or assignment) likewise covenants and agrees, notwithstanding anything to the contrary contained in any of the Subordinated Debt Documents, that the payment of any and all of the Subordinated Debt shall be subordinate and subject in right and time of payment, to the extent and in the manner hereinafter set forth, to the prior payment in full of the Senior Debt. Each holder of Senior Debt, whether now outstanding or hereafter created, incurred, assumed or guaranteed, shall be deemed to have acquired Senior Debt in reliance upon the provisions contained in this Agreement.

2.2. Liquidation, Dissolution, Bankruptcy. In the event of any Proceeding involving any Company:

(a) All Senior Debt shall first be paid in full before any Distribution (other than any Distribution to the extent consisting of any Reorganization Subordinated Securities), whether in cash, securities or other property, shall be made to Subordinated Creditors on account of any Subordinated Debt.

(b) Any Distribution, whether in cash, securities or other property, which would otherwise, but for the terms hereof, be payable or deliverable in respect of the Subordinated Debt (other than any Distribution to the extent consisting of any Reorganization Subordinated Securities permitted to be retained by Subordinated Creditors), shall be paid or delivered directly to Primary Agent (to be held and/or applied by Primary Agent in accordance with the terms of the applicable Senior Debt Documents) until all Senior Debt is paid in full. Subordinated Creditors irrevocably authorize, empower and direct any debtor, debtor in possession, receiver, trustee, liquidator, custodian, conservator or other Person having authority, to pay or otherwise deliver all such Distributions to Primary Agent. Subordinated Creditors also irrevocably authorize and empower Primary Agent, in the name of Subordinated Creditors, to demand, sue for, collect and receive any and all such Distributions.

(c) Subordinated Creditors agree to execute, verify, deliver and file any proofs of claim in respect of the Subordinated Debt requested by a Primary Agent in connection with any such Proceeding and hereby irrevocably authorizes, empowers and appoints such Primary Agent their agent and attorney-in-fact to execute, verify, deliver and file such proofs of claim upon the failure of Subordinated Creditors promptly to do so prior to 10 days before the expiration of the time to file any such proof of claim.

(d) Subordinated Creditors agree that they will consent to, and not object to or oppose any use of cash collateral consented to by Primary Agent or any financing provided by any Senior Lender to any Company (or any financing provided by any other Person consented to by Primary Agent) (collectively, "DIP Financing") on such terms and conditions as Primary Agent, in its sole discretion, may decide. In connection therewith, any Company may grant to one or more Senior Agents and Senior Lenders or such other lender, as applicable, liens and security interests upon all of the property of

such Company, which liens and security interests (i) shall secure payment of all Senior Debt (whether such Senior Debt arose prior to the commencement of any Proceeding or at any time thereafter) and all other financing provided by any Senior Lender or consented to by Primary Agent during the Proceeding and (ii) shall be superior in priority to the liens and security interests, if any, in favor of Subordinated Creditors on the property of such Company. If, in connection with any cash collateral use or DIP Financing, any liens and security interests on the Collateral held by Primary Agent are subject to a surcharge or are subordinated to an administrative priority claim, a professional fee "carve out," or fees owed to the United States Trustee (voluntarily, or involuntarily), then the liens on the Collateral of Subordinated Creditors shall also be subordinated to such interest or claim and shall remain subordinated to the liens and security interests on the Collateral of Primary Agent consistent with this Agreement. Subordinated Creditors agree that they will be deemed to consent to, and not object to or oppose, a sale or other disposition of any property securing all of any part of any Senior Debt free and clear of security interests, liens or other claims of Subordinated Creditors under the Bankruptcy Code, including Sections 363, 365 and 1129 of the Bankruptcy Code, if Primary Agent has expressly consented to such sale or disposition. Subordinated Creditors agree not to assert any right it may have (including any right to adequate protection of their interests in Collateral) in any Proceeding arising from any DIP Financing to which Primary Agent expressly consents or Company's use, sale or other disposition of Collateral and agrees that it will not seek (or support any other Person seeking) to have any stay, whether automatic or otherwise, lifted with respect to any Collateral without the prior written consent of Primary Agent. Except as expressly permitted by the Senior Intercreditor Agreement, Subordinated Creditors will not, and will not permit any of their respective Affiliates to, directly or indirectly provide, participate in or otherwise support, any financing in a Proceeding to any Company without the prior written consent of Primary Agent. Subordinated Creditors will not object to or oppose any adequate protection sought by Primary Agent or object to or oppose any motion by Primary Agent to lift the automatic stay or any other stay in any Proceeding. Except for replacement liens on Collateral subordinated to the liens of Primary Agent on such Collateral, Subordinated Creditors will not seek or assert any right they may have for adequate protection of its interest in any Collateral. Subordinated Creditors waive any claim they may now or hereafter have arising out of Primary Agent's or Senior Lenders' election, in any Proceeding, of the application of Section 1111(b)(2) of the Bankruptcy Code, and/or any borrowing or grant of a security interest under Section 364 of the Bankruptcy Code by any Company, as debtor in possession. Subordinated Creditors further agree that they shall not, without Primary Agent's prior written consent, commence or continue any Proceeding, propose any plan of reorganization, arrangement or proposal or file any motion, pleading or material in support of any motion or plan of reorganization, arrangement or proposal that would not result in all Senior Debt being Paid in Full on or before the effective date thereof, is in conflict with the terms of this Agreement, or is opposed by Senior Lenders or Primary Agent, or oppose any plan of reorganization or liquidation supported by Primary Agent.

(e) The Senior Debt shall continue to be treated as Senior Debt and the provisions of this Agreement shall continue to govern the relative rights and priorities of Senior Lenders and Subordinated Creditors even if all or part of the Senior Debt or the

security interests securing the Senior Debt are subordinated, set aside, avoided, invalidated or disallowed in connection with any such Proceeding, and this Agreement shall be reinstated if at any time any payment of any of the Senior Debt is rescinded or must otherwise be returned by any Senior Lender or any representative of such Senior Lender.

(f) In any Proceeding, the Subordinated Creditors may exercise any rights and remedies that could be exercised by an unsecured creditor in accordance with applicable law, so long as such exercise does not conflict with the terms of this Agreement.

2.3. Subordinated Debt Payment Restrictions. Notwithstanding the terms of the Subordinated Debt Documents, each Company hereby agrees that it may not make, and Subordinated Creditors hereby agree that they will not accept, any Distribution with respect to the Subordinated Debt until the Senior Debt is paid in full other than, subject to the terms of subsection 2.2 of this Agreement, Permitted Subordinated Debt Payments and any Distribution of Reorganization Subordinated Securities; provided, however, that the Companies and Subordinated Creditors further agree that no Permitted Subordinated Debt Payment may be made by a Company or accepted by Subordinated Creditor if, at the time of such payment, a Senior Default exists.

2.4. Subordinated Debt Standstill Provisions. Until the Senior Debt is paid in full, Subordinated Creditors shall not, without the prior written consent of the Senior Agents, take any Enforcement Action with respect to the Subordinated Debt or the Collateral under or in connection with the Subordinated Debt Documents, except a Subordinated Creditor may (a) file any proof of claim or statement of interest and vote on a plan of reorganization (including a vote to accept or reject a plan of partial or complete liquidation, reorganization, arrangement, composition or extension) to the extent in accordance with this Agreement, (b) take action to create, perfect, preserve or protect (but not enforce) its lien on the Collateral, so long as such actions are not adverse to the priority status of the Liens on the Collateral securing the Senior Debt or the rights of either Senior Agent or Senior Creditor to exercise any Enforcement Action, (c) file any responsive or defensive pleadings in opposition to a claim objecting to or otherwise seeking disallowance of any Subordinated Debt or a lien securing any Subordinated Debt, (d) join (but not exercise any control over) a judicial foreclosure or lien enforcement proceeding with respect to the Collateral initiated by any Senior Agent, to the extent that such action could not reasonably be expected to interfere with, restrain, hinder, limit or delay any Enforcement Action by any Senior Creditor, but no Subordinated Creditor may receive any Distribution with respect thereto unless such Distribution is expressly permitted herein, (e) bid for or purchase Collateral at any public, private or judicial foreclosure upon such Collateral initiated by any Senior Creditor, or any sale of Collateral during a Proceeding; provided that such bid may not include a "credit bid" in respect of any Subordinated Debt unless the net cash proceeds of such bid are otherwise sufficient to cause the Senior Debt to be Paid in Full, and are applied to cause the Senior Debt to be Paid in Full, in each case at the closing of such bid, (f) accelerate any Subordinated Debt in accordance with the provisions of the Subordinated Debt Documents and (g) seek adequate protection during a Proceeding to the extent expressly permitted by Section 2.2(d), in the case of each of clauses (a) through (f), in accordance with, not inconsistent with, or in contravention of the other terms of this Agreement. Any Distributions or other proceeds of any Enforcement Action obtained by Subordinated Creditors (other than a Distribution of

Reorganization Subordinated Securities) shall in any event be held in trust by it for the benefit of Primary Agent and applicable Senior Lenders and promptly paid or delivered to Primary Agent for the benefit of the applicable Senior Lenders in the form received until the Senior Debt is paid in full.

2.5. Incorrect Payments. If any Distribution on account of the Subordinated Debt not permitted to be made by a Company or accepted by Subordinated Creditors under this Agreement is received by any Subordinated Creditors, such Distribution shall not be commingled with any of the assets of Subordinated Creditors, shall be held in trust by Subordinated Creditors for the benefit of Senior Creditors and shall be promptly paid over to Senior Agent for application (in accordance with the Senior Intercreditor Agreement and the other Senior Debt Documents) to the payment of the Senior Debt then remaining unpaid, until all of the Senior Debt is paid in full.

2.6. Subordination of Liens and Security Interests; Agreement Not to Contest; Sale of Collateral; Release of Liens. Until the Senior Debt has been paid in full, any liens and security interests of Subordinated Creditors in the Collateral which may exist shall be and hereby are subordinated for all purposes and in all respects to the liens and security interests of the Senior Creditors in the Collateral, regardless of the time, manner or order of perfection of any such liens and security interests and regardless of the validity, perfection or enforceability of such liens and security interests. Subordinated Creditors agree that they will not at any time contest the validity, perfection, priority or enforceability of the Senior Debt, the Senior Debt Documents, or the liens and security interests of the Senior Creditors in the Collateral securing the Senior Debt. In the event that a Company desires to sell, lease, license or otherwise dispose of any interest in any of the Collateral and Primary Agent consents to such Disposition, Subordinated Creditors shall be deemed to have consented to such Disposition and such Disposition shall be free and clear of any liens and security interests of Subordinated Creditors in such Collateral and any purchaser of any Collateral may rely on this Agreement as evidence of Subordinated Creditors' consent to such Disposition and that such Disposition is free and clear of any liens and security interests of Subordinated Creditors in such Collateral. In the event that Primary Agent releases or agrees to release any of its liens or security interests in the Collateral in connection with an Enforcement Action by such Primary Agent, Primary Agent shall be deemed authorized by Subordinated Creditor to file UCC termination statements in respect of the liens and security interests in favor of Subordinated Creditor solely with respect to such Collateral subject to such sale, lease, license or other disposition. Subordinated Creditors shall (or shall cause its agent to) promptly execute and deliver to Primary Agent such termination statements and releases as Primary Agent shall request to effect the release of the liens and security interests of Subordinated Creditors in such Collateral in accordance with this subsection 2.6. In furtherance of the foregoing, Subordinated Creditors hereby irrevocably appoint Primary Agent its attorney-in-fact, with full authority in the place and stead of Subordinated Creditors and in the name of Subordinated Creditors or otherwise, to execute and deliver any document or instrument which Subordinated Creditors may be required to deliver pursuant to this subsection 2.6.

2.7. Sale, Transfer or other Disposition of Subordinated Debt.

(a) Subordinated Creditors shall not sell, assign, pledge, dispose of or otherwise transfer all or any portion of the Subordinated Debt or any Subordinated Debt Document: (i) without giving prior written notice of such action to Senior Agents, and (ii) unless, prior to the consummation of any such action, the transferee thereof shall execute and deliver to Senior Agents an agreement joining such transferee as a party to this Agreement as Subordinated Creditors or an agreement substantially identical to this Agreement, providing for the continued subordination of the Subordinated Debt to the Senior Debt as provided herein and for the continued effectiveness of all of the rights of Senior Creditors arising under this Agreement.

(b) Notwithstanding the failure of any transferee to execute or deliver an agreement substantially identical to this Agreement, the subordination effected hereby shall survive any sale, assignment, pledge, disposition or other transfer of all or any portion of the Subordinated Debt, and the terms of this Agreement shall be binding upon the successors and assigns of Subordinated Creditors, as provided in Section 9 hereof.

2.8. Legends. Until the termination of this Agreement in accordance with Section 15 hereof, Subordinated Creditor will cause to be clearly, conspicuously and prominently inserted on the face of the Subordinated Note and any other Subordinated Debt Document, as well as any renewals or replacements thereof, the following legend:

[**"This [agreement/instrument] and the rights and obligations evidenced hereby are subordinate in the manner and to the extent set forth in that certain Subordination and Intercreditor Agreement (the "Subordination Agreement") dated as of _____, _____ among [*name of Subordinated Creditor*], _____, a _____ ("_____"),_____, a _____ ("_____") and _____ ("Agent"), to the indebtedness (including interest) owed by _____ and _____ pursuant to that certain Credit Agreement dated as of _____, _____ among _____, _____, Agent and the lenders from time to time party thereto and the other Senior Debt Documents (as defined in the Subordination Agreement), as such Credit Agreement and other Senior Debt Documents have been and hereafter may be amended, supplemented or otherwise modified from time to time and to indebtedness refinancing the indebtedness under those agreements as contemplated by the Subordination Agreement; and each holder of this instrument, by its acceptance hereof, irrevocably agrees to be bound by the provisions of the Subordination Agreement."]**

2.9. Obligations Hereunder Not Affected. All rights and interests of Senior Creditors hereunder, and all agreements and obligations of Subordinated Creditors and Companies hereunder, shall remain in full force and effect irrespective of:

(a) any lack of validity or enforceability of any document evidencing any of the Senior Debt;

(b) any change in the time, manner or place of payment of, or any other term of, all or any of the Senior Debt, or any other permitted amendment or waiver of or any release or consent to departure from any of the Senior Debt Documents;

(c) any exchange, subordination, release or non-perfection of any collateral for all or any of the Senior Debt;

(d) any failure of any of Senior Creditors to assert any claim or to enforce any right or remedy against any other party hereto under the provisions of this Agreement or any Senior Debt Document other than this Agreement;

(e) any reduction, limitation, impairment or termination of the Senior Debt for any reason, including any claim of waiver, release, surrender, alteration or compromise, and shall not be subject to (and Companies and Subordinated Creditors hereby waive any right to or claim of) any defense or setoff, counterclaim, recoupment or termination whatsoever by reason of invalidity, illegality, nongenuiness, irregularity, compromise, unenforceability of, or any other event or occurrence affecting, any Senior Debt; and

(f) any other circumstance which might otherwise constitute a defense available to, or a discharge of, Companies in respect of the Senior Debt or Subordinated Creditors in respect of this Agreement.

Subordinated Creditors acknowledge and agree that Senior Creditors may in accordance with the terms of the Senior Debt Documents, without notice or demand and without affecting or impairing Subordinated Creditors' obligations hereunder, (i) modify the Senior Debt Documents; (ii) take or hold security for the payment of the Senior Debt and exchange, enforce, foreclose upon, waive and release any such security; (iii) apply such security and direct the order or manner of sale thereof as Senior Creditors in their sole discretion, may determine; (iv) release and substitute one or more endorsers, warrantors, borrowers or other obligors; and (v) exercise or refrain from exercising any rights against any Company or any other Person. The Senior Debt shall continue to be treated as Senior Debt and the provisions of this Agreement shall continue to govern the relative rights and priorities of Senior Creditors and Subordinated Creditors even if all or part of the Senior Debt or the security interests securing the Senior Debt are subordinated, set aside, avoided, invalidated or disallowed.

2.10. Marshaling. Subordinated Creditors hereby waive any rights they may have under applicable law to assert the doctrine of marshaling or to otherwise require any of Senior Creditors to marshal any property of any Company or of any guarantor or other obligor of the Senior Debt for the benefit of Subordinated Creditors.

2.11. Application of Proceeds from Sale or other Disposition of the Collateral. In the event of any Disposition (including a casualty loss or taking through eminent domain) of the Collateral, the proceeds resulting therefrom (including insurance proceeds) shall be applied to the Senior Debt in the order and manner set forth in the Senior Intercreditor Agreement and the other Senior Debt Documents until such time as the Senior Debt is Paid in Full.

2.12. Rights Relating to Senior Agent's Actions with respect to the Collateral. Subordinated Creditors hereby waive, to the extent permitted by applicable law, any rights which it may have to enjoin or otherwise obtain a judicial or administrative order preventing any of Senior Creditors from taking, or refraining from taking, any action with respect to all or any part of the Collateral. Without limitation of the foregoing, Subordinated Creditors hereby agree (a) that they have no right to direct or object to the manner in which any of Senior Creditors applies the proceeds of the Collateral resulting from the exercise by any of Senior Creditors of rights and remedies under the Senior Debt Documents to the Senior Debt, (b) that they waive any right to object to any action or inaction by any of Senior Creditors with respect to exercising its rights or remedies under the Senior Debt Documents or with respect to the Collateral (including in connection with any foreclosure or enforcement of liens in respect of Collateral), and (c) no Senior Secured Party has assumed any obligation to act as the agent for Subordinated Creditors with respect to the Collateral. Subordinated Creditors shall not object to any proposed retention or acceptance of Collateral by any of Senior Creditors in full or partial satisfaction of such Senior Secured Party's Senior Debt and agrees that any such retention or acceptance by any of Senior Creditors shall be free and clear of Subordinated Creditors' security interests and liens.

2.13. Insurance Proceeds. Until the Senior Debt has been Paid in Full, Primary Agent shall have the sole and exclusive right, as against Subordinated Creditors, to adjust settlement of insurance claims in the event of any covered loss, theft or destruction of such Collateral. All proceeds of such insurance shall inure to the benefit of Senior Creditors, to the extent of the Senior Debt, and Subordinated Creditors shall cooperate (if necessary) in a reasonable manner in effecting the payment of insurance proceeds to the holders of Senior Debt (or any representative thereof). In the event the requisite holders of Senior Debt (or any representative thereof), in their or its sole discretion or pursuant to agreement with any Company, permits such Company to utilize the proceeds of insurance, the consent of the holders of Senior Debt (or any representative thereof) shall be deemed to include the consent of Subordinated Creditors.

3. **Modifications**.

3.1. Modifications to Senior Debt Documents. Senior Creditors may at any time and from time to time without the consent of or notice to Subordinated Creditors, without incurring liability to Subordinated Creditor and without impairing or releasing the obligations of Subordinated Creditors under this Agreement, change the manner or place of payment or extend the time of payment of or renew or alter any of the terms of the Senior Debt, or amend in any manner any agreement, note, guaranty or other instrument evidencing or securing or otherwise relating to the Senior Debt.

3.2. Modifications to Subordinated Debt Documents. Until the Senior Debt has been paid in full, and notwithstanding anything to the contrary contained in the Subordinated Debt Documents, Subordinated Creditors shall not, without the prior written consent of Senior Agents, amend, modify or supplement the Subordinated Debt Documents in a manner not permitted by the Working Capital Credit Agreement and the Term Loan Credit Agreement.

4. **Representations and Warranties**.

4.1. Representations and Warranties of Subordinated Creditors. Subordinated Agent hereby represents and warrants to Senior Creditors that as of the date hereof: (a) Subordinated Agent, is a limited liability company duly formed and validly existing under the laws of the State of Delaware; (b) Subordinated Agent has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action (including, by all Subordinated Lenders); (c) the execution of this Agreement by Subordinated Agent will not violate or conflict with the organizational documents of any of Subordinated Agent, any material agreement binding upon Subordinated Agent or any law, regulation or order or require any consent or approval which has not been obtained; (d) this Agreement is the legal, valid and binding obligation of Subordinated Creditors, enforceable against Subordinated Creditors in accordance with its terms, and (e) Subordinated Creditors are the sole owners, beneficially and of record, of the Subordinated Debt Documents and the Subordinated Debt.

4.2. Representations and Warranties of Working Capital Agent. Working Capital Agent hereby represents and warrants to Subordinated Creditors that as of the date hereof: (a) Working Capital Agent is a Delaware limited liability company; (b) Working Capital Agent has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action (including, by all Working Capital Lenders); (c) the execution of this Agreement by Working Capital Agent will not violate or conflict with the organizational documents of Working Capital Agent, any material agreement binding upon Working Capital Agent or any law, regulation or order or require any consent or approval which has not been obtained; and (d) this Agreement is the legal, valid and binding obligation of Working Capital Creditors, enforceable against Working Capital Agent in accordance with its terms.

4.3. Representations and Warranties of Term Loan Agent. Term Loan Agent hereby represents and warrants to Subordinated Creditors that as of the date hereof: (a) Term Loan Agent is a Delaware; (b) Term Loan Agent has the power and authority to enter into, execute, deliver and carry out the terms of this Agreement, all of which have been duly authorized by all proper and necessary action (including, by all Term Loan Lenders); (c) the execution of this Agreement by Term Loan Agent will not violate or conflict with the organizational documents of Term Loan Agent, any material agreement binding upon Term Loan Agent or any law, regulation or order or require any consent or approval which has not been obtained; and (d) this Agreement is the legal, valid and binding obligation of Term Loan Creditors, enforceable against Term Loan Agent in accordance with its terms.

5. **Subrogation; Recovery**. Subordinated Creditors will not exercise (i) any right of subrogation that they may now or hereafter have or obtain in respect of the rights of any of Senior Creditors against any Company, any guarantor of any of the Senior Debt or any of the Collateral or (ii) any right to participate in any claim or remedy of any of Senior Creditors against any Company, any guarantor of any of the Senior Debt or any Collateral, whether or not such claim, remedy or right arises in equity or under contract, statute or common law, in each case until all of the Senior Debt has been Paid in Full. Subject to the Payment Full of the Senior Debt, Subordinated Creditors shall be subrogated to the rights of Senior Agents and Senior

Lenders to receive Distributions with respect to the Senior Debt until the Subordinated Debt is paid in full. If any of Senior Creditors are required to disgorge any proceeds of Collateral, payment or other amount received by such Person (whether because such proceeds, payment or other amount is invalidated, declared to be fraudulent or preferential or otherwise) or turn over or otherwise pay any amount (a "Recovery") to the estate or to any creditor or representative of a Company or any other Person, then the Senior Debt shall be reinstated (to the extent of such Recovery) as if such Senior Debt had never been paid and to the extent Subordinated Creditors have received proceeds, payments or other amounts to which Subordinated Creditors would not have been entitled under this Agreement had such reinstatement occurred prior to receipt of such proceeds, payments or other amounts, Subordinated Creditors shall turn over such proceeds, payments or other amounts to Primary Agent for reapplication to the Senior Debt. A Distribution made pursuant to this Agreement to Senior Creditors which otherwise would have been made to Subordinated Creditors are not, as between the Companies and Subordinated Creditors, a payment by the Companies to or on account of the Senior Debt.

6. **Modification**. Any modification or waiver of any provision of this Agreement, or any consent to any departure by any party from the terms hereof, shall not be effective in any event unless the same is in writing and signed by each Senior Agent and Subordinated Agent, and then such modification, waiver or consent shall be effective only in the specific instance and for the specific purpose given. Any notice to or demand on any party hereto in any event not specifically required hereunder shall not entitle the party receiving such notice or demand to any other or further notice or demand in the same, similar or other circumstances unless specifically required hereunder.

7. **Further Assurances**. Each party to this Agreement promptly will execute and deliver such further instruments and agreements and do such further acts and things as may be reasonably requested in writing by any other party hereto that may be necessary or desirable in order to effect fully the purposes of this Agreement.

8. **Notices**. Unless otherwise specifically provided herein, any notice delivered under this Agreement shall be in writing addressed to the respective party as set forth below and may be personally served, telecopied or sent by overnight courier service or certified or registered United States mail and shall be deemed to have been given (a) if delivered in person, when delivered; (b) if delivered by telecopy, on the date of transmission if transmitted on a business day before 4:00 p.m. (Chicago time) or, if not, on the next succeeding business day; (c) if delivered by overnight courier, one business day after delivery to such courier properly addressed; or (d) if by United States mail, four business days after deposit in the United States mail, postage prepaid and properly addressed.

Notices shall be addressed as follows:

If to Subordinated Agent or Subordinated Lenders:

_____
_____
Attention: _____
Telecopy: _____

With a copy to:

_____
_____
Attention: _____
Telecopy: _____

If to a Company:

_____
_____
Attention: _____
Telecopy: _____

With a copy to:

_____
_____
Attention: _____
Telecopy: _____

If to Working Capital Agent or Working Capital Lenders:

Wells Fargo Capital Finance, LLC
10 S. Wacker Drive, 13th Floor
Chicago, Illinois 60606
Attention: Portfolio Manager - Boomerang
Telecopy: (312) 332-0420

With a copy to:

Goldberg Kohn Ltd.
55 East Monroe Street, Suite 3300
Chicago, Illinois 60603
Attention: Gary T. Zussman, Esq.
Telecopy: (312) 863-7440

If to Term Loan Agent or Term Loan Lenders:

Cortland Capital Market Services LLC
225 W. Washington St., 21st Floor
Chicago, Illinois 60606
Attention: Ryan Morick and Legal Department
Telephone: 312-564-5072
Telecopier: 312-376-0751
Electronic Mail: ryan.morick@cortlandglobal.com and legal@cortlandglobal.com

With a copy to:

King & Spalding LLP
1185 Avenue of the Americas
New York, New York 10036
Attention: Michael C. Rupe, Esq.
Telephone: (212) 556-2135
Facsimile: (212) 556-2222
E-mail: mrupe@kslaw.com

or in any case, to such other address as the party addressed shall have previously designated by written notice to the serving party, given in accordance with this Section 8.

9. **Successors and Assigns; Permitted Refinancing**. This Agreement shall inure to the benefit of, and shall be binding upon, the respective successors and assigns of the Senior Creditors, Subordinated Creditors and the Companies. To the extent permitted under the Senior Debt Documents, Senior Lenders may, from time to time, without notice to Subordinated Creditor, assign or transfer any or all of the Senior Debt or any interest therein to any Person and, notwithstanding any such assignment or transfer, or any subsequent assignment or transfer, the Senior Debt shall, subject to the terms hereof, be and remain Senior Debt for purposes of this Agreement, and every permitted assignee or transferee of any of the Senior Debt or of any interest therein shall, to the extent of the interest of such permitted assignee or transferee in the Senior Debt, be entitled to rely upon and be the third party beneficiary of the subordination provided under this Agreement and shall be entitled to enforce the terms and provisions hereof to the same extent as if such assignee or transferee were initially a party hereto. Subordinated Creditors agree that any party that consummates a Permitted Refinancing may rely on and enforce this Agreement. Subordinated Creditors further agree that they will, at the request of Agent, enter into an agreement, in the form of this Agreement, mutatis mutandis, with the party that consummates the Permitted Refinancing; provided, that the failure of Subordinated Creditors to execute such an agreement shall not affect such party's right to rely on and enforce the terms of this Agreement.

10. **Relative Rights**. This Agreement shall define the relative rights of Senior Creditors and Subordinated Creditors. Nothing in this Agreement shall (a) impair, as among the Companies and Senior Creditors and as between the Companies and Subordinated Creditors, the obligation of the Companies with respect to the payment of the Senior Debt and the Subordinated Debt in accordance with their respective terms or (b) affect the relative rights of Senior Creditors or Subordinated Creditors with respect to any other creditors of any Company.

11. **Conflict**. In the event of any conflict between any term, covenant or condition of this Agreement and any term, covenant or condition of any of the Subordinated Debt Documents, the provisions of this Agreement shall control and govern.

12. **Headings**. The paragraph headings used in this Agreement are for convenience only and shall not affect the interpretation of any of the provisions hereof.

13. **Counterparts**. This Agreement may be executed in one or more counterparts, each of which shall be deemed an original, but all of which together shall constitute one and the same instrument.

14. **Severability**. In the event that any provision of this Agreement is deemed to be invalid, illegal or unenforceable by reason of the operation of any law or by reason of the interpretation placed thereon by any court or governmental authority, the validity, legality and enforceability of the remaining provisions of this Agreement shall not in any way be affected or impaired thereby, and the affected provision shall be modified to the minimum extent permitted by law so as most fully to achieve the intention of this Agreement.

15. **Continuation of Subordination; Termination of Agreement**. This Agreement shall be applicable both before and after the commencement of any Proceeding and all converted or succeeding cases in respect thereof. Accordingly, the provisions of this Agreement are intended to be and shall be enforceable as a subordination agreement within the meaning of Section 510 of the Bankruptcy Code. This Agreement shall remain in full force and effect until the payment in full of the Senior Debt after which this Agreement shall terminate without further action on the part of the parties hereto; provided, that if any payment is, subsequent to such termination, recovered from any holder of Senior Debt, this Agreement shall be reinstated; provided, further that a Permitted Refinancing shall not be deemed to be payment in full of the Senior Debt.

16. **APPLICABLE LAW. THIS AGREEMENT SHALL BE GOVERNED BY AND SHALL BE CONSTRUED AND ENFORCED IN ACCORDANCE WITH THE INTERNAL LAWS OF THE STATE OF NEW YORK, WITHOUT REGARD TO CONFLICTS OF LAW PRINCIPLES.**[1]

17. **CONSENT TO JURISDICTION**. EACH OF SUBORDINATED CREDITOR AND EACH COMPANY HEREBY CONSENTS TO THE JURISDICTION OF ANY STATE OR FEDERAL COURT LOCATED WITHIN NEW YORK COUNTY, STATE OF NEW YORK AND IRREVOCABLY AGREES THAT, SUBJECT TO AGENT'S ELECTION, ALL ACTIONS OR PROCEEDINGS ARISING OUT OF OR RELATING TO THIS AGREEMENT SHALL BE LITIGATED IN SUCH COURTS. EACH OF SUBORDINATED CREDITOR AND EACH COMPANY EXPRESSLY SUBMITS AND CONSENTS TO THE JURISDICTION OF THE AFORESAID COURTS AND WAIVES ANY DEFENSE OF FORUM NON CONVENIENS. EACH OF SUBORDINATED CREDITOR AND EACH COMPANY HEREBY WAIVES PERSONAL SERVICE OF ANY AND ALL PROCESS AND AGREES THAT ALL SUCH SERVICE OF PROCESS MAY BE MADE UPON IT BY CERTIFIED OR REGISTERED MAIL, RETURN RECEIPT REQUESTED, ADDRESSED TO SUBORDINATED CREDITOR AND EACH COMPANY AT THEIR RESPECTIVE ADDRESSES SET FORTH IN THIS AGREEMENT AND SERVICE SO MADE SHALL BE COMPLETE 10 DAYS AFTER THE SAME HAS BEEN POSTED.

18. **WAIVER OF JURY TRIAL**. SUBORDINATED CREDITORS, EACH COMPANY AND SENIOR CREDITORS HEREBY WAIVE THEIR RESPECTIVE RIGHTS

[1] NTD: Updated Sections 16 and 17 for New York.

TO A JURY TRIAL OF ANY CLAIM OR CAUSE OF ACTION BASED UPON OR ARISING OUT OF THIS AGREEMENT, ANY OF THE SUBORDINATED DEBT DOCUMENTS OR ANY OF THE SENIOR DEBT DOCUMENTS. EACH OF SUBORDINATED CREDITORS, EACH COMPANY AND SENIOR CREDITORS ACKNOWLEDGES THAT THIS WAIVER IS A MATERIAL INDUCEMENT TO ENTER INTO A BUSINESS RELATIONSHIP, THAT EACH HAS RELIED ON THE WAIVER IN ENTERING INTO THIS AGREEMENT AND THE SENIOR DEBT DOCUMENTS AND THAT EACH WILL CONTINUE TO RELY ON THE WAIVER IN THEIR RELATED FUTURE DEALINGS. EACH OF SUBORDINATED CREDITORS, EACH COMPANY AND SENIOR CREDITORS WARRANTS AND REPRESENTS THAT EACH HAS HAD THE OPPORTUNITY OF REVIEWING THIS JURY WAIVER WITH LEGAL COUNSEL, AND THAT EACH KNOWINGLY AND VOLUNTARILY WAIVES ITS JURY TRIAL RIGHTS.

19. **Additional Company**. Borrower shall cause any Person that becomes a direct or indirect subsidiary of Borrower, or otherwise becomes a "Loan Party" under and as defined in the Working Capital Credit Agreement, to execute a joinder (in form and substance satisfactory to Senior Agents) to this Agreement to bind such Person to this Agreement as a Company.

20. **Prevailing Parties**. In the event it becomes necessary for any Senior Creditors or Subordinated Creditors to commence or become a party to any proceeding or action to enforce the provisions of this Agreement, the court or body before which the same shall be tried shall award to the prevailing party all costs and expenses thereof, including reasonable attorneys' fees, the usual and customary and lawfully recoverable court costs, and all other expenses in connection therewith.

21. **Bailee for Perfection**.

21.1. Each Senior Agent as Bailee.

(a) Each Senior Agent agrees to hold any Collateral that is in its possession, to the extent that possession thereof is effective to perfect a Lien thereon under the Uniform Commercial Code (such Collateral being referred to herein as the "Pledged Collateral"), as bailee and agent for and on behalf of Subordinated Agent solely for the purpose of perfecting the Lien granted to Subordinated Agent in such Pledged Collateral (including as to any securities or any deposit accounts or securities accounts, if any, for purposes of satisfying the requirements of Sections 8-106(d)(3), 8-301(a)(2) and 9-313(c) of the Uniform Commercial Code) pursuant to the Subordinated Debt Documents, subject to the terms and conditions of this Section 21.

(b) Until the Payment in Full of the Senior Debt has occurred, each Senior Agent shall be entitled to deal with the Pledged Collateral in accordance with the terms of the applicable Senior Debt Documents. The rights of Subordinated Agent to such Pledged Collateral shall at all times be subject to the terms of this Agreement and to each Senior Agent's rights under the applicable Senior Debt Documents.

(c) No Senior Agent shall have any obligation whatsoever to Subordinated Agent or any other Subordinated Creditor to assure that the Pledged Collateral is

genuine or owned by any of the Companies or to preserve rights or benefits of any Person except as expressly set forth in this Section 21. The duties or responsibilities of each Senior Agent under this Section 21 shall be limited solely to possessing the Pledged Collateral as bailee and agent for and on behalf of Subordinated Agent for purposes of perfecting the lien held by Subordinated Agent.

(d) No Senior Agent shall have by reason of the Senior Debt Documents, the Subordinated Debt Documents or this Agreement or any other document or otherwise in connection with the transactions contemplated by this Agreement, the Senior Debt Documents and the Subordinated Debt Documents, a fiduciary relationship in respect of the Subordinated Agent or any of the other Subordinated Creditors or any liability to the Subordinated Agent or any other Subordinated Creditor in connection with its holding the Pledged Collateral. Subordinated Agent hereby waives any claims against the Senior Agents for any breach or alleged breach of fiduciary duty.

(e) To the extent any deposit account established by any Company is under the control (as referred to in Section 9-314 of the UCC) of any Senior Agent at any time, such Senior Agent will act as agent and gratuitous bailee for Subordinated Agent for the purpose of perfecting Subordinated Agent's Liens in such deposit accounts and the cash and other assets deposited therein, but will have no duty, responsibility or obligation to Subordinated Agent (including, without limitation, any duty, responsibility or obligation as to the maintenance of such control, the effect of such arrangement or the establishment of such perfection).

21.2. Transfer of Pledged Collateral; Relinquishment of Control.

(a) Upon the Payment in Full of the Senior Debt, to the extent permitted under applicable law, upon the request of Subordinated Agent, each Senior Agent shall, without recourse or warranty, transfer the Pledged Collateral, if any, then in its possession to Subordinated Agent, except in the event and to the extent (i) any Senior Agent or any other Senior Creditor has retained or otherwise acquired such Collateral in full or partial satisfaction of any of the Senior Debt, (ii) such Collateral is sold or otherwise disposed of by any Senior Agent or any other Senior Creditor or by a Company, or (iii) it is otherwise required by any order of any court or other governmental authority or applicable law or would result in the risk of liability of any Senior Creditor to any third party. The foregoing provision shall not impose on any Senior Agent or any other Senior Creditor any obligations which would conflict with prior perfected claims therein in favor of any other person or any order or decree of any court or other governmental authority or any applicable law.

(b) Upon the Payment in Full of the Senior Debt, with respect to any Collateral under the control (as defined in the Uniform Commercial Code for perfection purposes) but not the possession of any Senior Agent, such Senior Agent shall notify the other parties to the agreements establishing such control that it is no

longer the "Secured Party Representative", "Agent Representative", "Lender Representative", or similarly named secured party with control thereunder, or otherwise entitled to act under such agreement, and it shall confirm to such parties that Subordinated Agent is thereafter the "Secured Party Representative", "Agent Representative", "Lender Representative", or similarly named secured party with control as any of such terms are used in any such agreement and is otherwise entitled to the rights of the secured party under such agreement.

(c) Each Company acknowledges and agrees to the delivery or transfer of possession or control by each Senior Agent to Subordinated Agent of any such Pledged Control or other Collateral and waives and releases each Senior Agent and each other Senior Creditor, from any liability as a result of such action. Each Company shall take such further actions as are reasonably required to effectuate the transfer contemplated in this Section 21.2 and shall indemnify each Senior Agent for loss or damage suffered by such Senior Agent as a result of such transfer, except to the extent resulting from such Senior Agent's own gross negligence or willful misconduct as determined pursuant to a final, non-appealable order of a court of competent jurisdiction.

IN WITNESS WHEREOF, Subordinated Agent's, the Companies and Senior Agents have caused this Agreement to be executed as of the date first above written.

SUBORDINATED AGENT:

CORTLAND CAPITAL MARKET SERVICES, LLC

By: _____
Name: _____
Title: _____

WORKING CAPITAL AGENT:

WELLS FARGO CAPITAL FINANCE CORPORATION, LLC

By: _____
Name: _____
Title: _____

TERM LOAN AGENT:

CORTLAND CAPITAL MARKET SERVICES, LLC

By: _____
Name: _____
Title: _____

EXHIBIT 17

Amended and Restated Certificate of Incorporation of BT Financing, Inc.

AMENDED AND RESTATED

CERTIFICATE OF INCORPORATION

OF

BT FINANCING, INC.

BT Financing, Inc., a corporation organized and existing under the laws of the State of Delaware (the "Corporation"), hereby certifies as follows:

(1) The name of the Corporation is BT Financing, Inc.

(2) The name under which the Corporation was originally incorporated was BT Financing, Inc. and the original Certificate of Incorporation of the Corporation was filed with the Secretary of State of the State of Delaware on October 8, 2009.

(3) The Corporation and certain of the Corporation's affiliates filed an Amended Joint Prearranged Chapter 11 Plan pursuant to chapter 11 of Title 11 of the United States Code, as amended (the "Bankruptcy Code") on September 4, 2015 (the "Plan") which was confirmed by an order, entered [●], 2015, of the United States Bankruptcy Court for the District of Delaware, a court having jurisdiction of a proceeding under the Bankruptcy Code (the "Order"), and such order provides for the making and filing of this Amended and Restated Certificate of Incorporation.

(4) The Board of Directors of the Corporation (the "Board") duly adopted resolutions in accordance with Section 303, Section 242 and Section 245 of the General Corporation Law of the State of Delaware (the "DGCL"), as authorized by the Order, to put into effect and carry out the Plan by amending and restating the Certificate of Incorporation in its entirety to read as follows:

FIRST: The name of the Corporation is BT Financing, Inc. (hereinafter the "Corporation").

SECOND: The address of the registered office of the Corporation in the State of Delaware is [●]. The name of its registered agent at that address is [●].

THIRD: The purpose of the Corporation is to engage in any lawful

act or activity for which a corporation may be organized under the General Corporation Law of the State of Delaware as set forth in Title 8 of the DGCL.

FOURTH: The total number of shares of stock which the Corporation shall have authority to issue is [•] of which the Corporation shall have authority to issue [•] shares of Common Stock, each having a par value of one cent $0.01 $[•], and [•] shares of Preferred Stock, each having a par value of one cent $0.01.

The Board is expressly authorized to provide for the issuance of all or any shares of the Preferred Stock in one or more classes or series, and to fix for each such class or series such voting powers, full or limited, or no voting powers, and such distinctive designations, preferences and relative, participating, optional or other special rights and such qualifications, limitations or restrictions thereof, as shall be stated and expressed in the resolution or resolutions adopted by the Board providing for the issuance of such class or series and as may be permitted by the DGCL, including, without limitation, the authority to provide that any such class or series may be (i) subject to redemption at such time or times and at such price or prices; (ii) entitled to receive dividends (which may be cumulative or non-cumulative) at such rates, on such conditions, and at such times, and payable in preference to, or in such relation to, the dividends payable on any other class or classes or any other series; (iii) entitled to such rights upon the dissolution of, or upon any distribution of the assets of, the Corporation; or (iv) convertible into, or exchangeable for, shares of any other class or classes of stock, or of any other series of the same or any other class or classes of stock, of the Corporation at such price or prices or at such rates of exchange and with such adjustments; all as may be stated in such resolution or resolutions.

The number of authorized shares of Preferred Stock may be increased or decreased (but not below the number of shares thereof then outstanding) by the affirmative vote of the holders of a majority of the outstanding shares of Common stock, without a vote of the holders of the Preferred Stock, or any class or series thereof, unless a vote of any such holders of Preferred Stock is required pursuant to another provision of this Certificate of Incorporation (including any certificate of designation).

Except as otherwise required by law or this Certificate of Incorporation, holders of Common Stock shall not be entitled to vote on any amendment to this Certificate of Incorporation (including any amendment to any Preferred Stock designation) that relates solely to the terms of one or more outstanding class or series of Preferred Stock if the holders of such affected class or

series are entitled, either separately or together with the holders of one or more other such classes or series, to vote thereon pursuant to this Certificate of Incorporation.

Pursuant to Section 1123(a)(6) of chapter 11 of title 11 of the Bankruptcy Code, the Corporation shall not issue any non-voting capital stock of any class, series or other designation; *provided*, *however*, that the provisions of this sentence shall (i) have no further force or effect beyond what is required by Section 1123(a)(6) of the Bankruptcy Code and (ii) only have such force and effect to the extent and for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applies to the Corporation.

FIFTH: The name and mailing address of the Sole Incorporator is as follows:

Name	Address
[•]	[•]

SIXTH: The following provisions are inserted for the management of the business and the conduct of the affairs of the Corporation, and for further definition, limitation and regulation of the powers of the Corporation and of its directors and stockholders:

(1) The business and affairs of the Corporation shall be managed by or under the direction of the Board.

(2) The directors shall have concurrent power with the stockholders to make, alter, amend, change, add to or repeal the By-Laws of the Corporation.

(3) The number of directors of the Corporation shall be as from time to time fixed by, or in the manner provided in, the By-Laws of the Corporation. Election of directors need not be by written ballot unless the By-Laws so provide.

(4) No director shall be personally liable to the Corporation or any of its stockholders for monetary damages for breach of fiduciary duty as a director, except for liability (i) for any breach of the director's duty of loyalty to the Corporation or its stockholders, (ii) for acts or omissions not in good faith or which involve intentional

misconduct or a knowing violation of law, (iii) pursuant to Section 174 of the DGCL or (iv) for any transaction from which the director derived an improper personal benefit. Any repeal or modification of this Article SIXTH by the stockholders of the Corporation shall not adversely affect any right or protection of a director of the Corporation existing at the time of such repeal or modification with respect to acts or omissions occurring prior to such repeal or modification.

(5) In addition to the powers and authority hereinbefore or by statute expressly conferred upon them, the directors are hereby empowered to exercise all such powers and do all such acts and things as may be exercised or done by the Corporation, subject, nevertheless, to the provisions of the DGCL, this Certificate of Incorporation, and any By-Laws adopted by the stockholders; *provided*, *however*, that no By-Laws hereafter adopted by the stockholders shall invalidate any prior act of the directors which would have been valid if such By-Laws had not been adopted.

SEVENTH: Meetings of stockholders may be held within or without the State of Delaware, as the By-Laws may provide. The books of the Corporation may be kept (subject to any provision contained in the DGCL) outside the State of Delaware at such place or places as may be designated from time to time by the Board or in the By-Laws of the Corporation.

EIGHTH: The Corporation renounces any interest or expectancy of the Corporation in, or in being offered an opportunity to participate in, any Excluded Opportunity. An "Excluded Opportunity" is any matter, transaction or interest that is presented to, or acquired, created or developed by, or which otherwise comes into the possession of, (i) any director of the Corporation who is not an employee of the Corporation or any of its subsidiaries, or (ii) any holder of shares of Common Stock or Preferred Stock or any partner, member, director, stockholder, employee or agent of any such holder, other than someone who is an employee of the Corporation or any of its subsidiaries (collectively, "Excluded Persons"), unless such matter, transaction or interest is presented to, or acquired, created or developed by, or otherwise comes into the possession of, an Excluded Person expressly and solely in such Excluded Person's capacity as a director of the Corporation. [TO BE EXPANDED TO COVER ANY ADDITIONAL MATTERS AGREED IN THE STOCKHOLDERS AGREEMENT]

NINTH: The Corporation elects not to be governed by Section 203

of the DGCL.

TENTH: The Corporation reserves the right to amend, alter, change or repeal any provision contained in this Certificate of Incorporation, in the manner now or hereafter prescribed by statute, and all rights conferred upon stockholders herein are granted subject to this reservation.

IN WITNESS WHEREOF, the Corporation has caused this Amended and Restated Certificate of Incorporation to be signed this [•] day of [•], 2015.

BT FINANCING, INC.

BY: _____

Name: [•]
Title: [•]

EXHIBIT 18

Amended and Restated By-Laws of BT Financing, Inc.

AMENDED AND RESTATED

BY-LAWS

OF

BT FINANCING, INC.

A Delaware Corporation

Effective [●], 2015

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BY-LAWS

OF

BT FINANCING, INC.
(hereinafter called the "Corporation")

ARTICLE I

OFFICES

Section 1.1 Registered Office. The registered office of the Corporation shall be in the City of [•],[•] County , State of Delaware.

Section 1.2 Other Offices. The Corporation may also have offices at such other places, both within and without the State of Delaware, as the Board of Directors may from time to time determine.

ARTICLE II

MEETINGS OF STOCKHOLDERS

Section 2.1 Place of Meetings. Meetings of the stockholders for the election of directors or for any other purpose shall be held at such time and place, either within or without the State of Delaware, as shall be designated from time to time by the Board of Directors.

Section 2.2 Annual Meetings. The Annual Meeting of Stockholders for the election of directors shall be held on such date and at such time as shall be designated from time to time by the Board of Directors. Any other proper business may be transacted at the Annual Meeting of Stockholders.

Section 2.3 Special Meetings. Unless otherwise required by law or by the certificate of incorporation of the Corporation, as amended and restated from time to time (the "Certificate of Incorporation"), Special Meetings of Stockholders, for any purpose or purposes, may be called by either (i) the Chairman, if there be one, or (ii) the President, (iii) any Vice President, if there be one, (iv) the Secretary or (v) any Assistant Secretary, if there be one, and shall be called by any such officer at the request in writing of (i) the Board of Directors, (ii) a committee of the Board of Directors that has been duly designated by the Board of Directors and whose powers and authority include the power to call such meetings or (iii) stockholders owning a majority of the capital stock of the Corporation issued and outstanding and entitled to vote. Such request shall state the purpose or purposes of the proposed meeting. At a Special Meeting of Stockholders, only such business shall be conducted as shall be specified in the notice of meeting (or any supplement thereto).

Section 2.4 Notice. Whenever stockholders are required or permitted to take any action at a meeting, notice of the meeting shall be given by providing such notice personally or by facsimile, telephone, email or other means of electronic communication which shall state the place, date and hour of the meeting, and, in the case of a Special Meeting, the purpose or

purposes for which the meeting is called. Unless otherwise required by law, written notice of any meeting shall be given not less than ten (10) nor more than sixty (60) days before the date of the meeting to each stockholder entitled to notice of and to vote at such meeting.

Section 2.5 Adjournments. Any meeting of the stockholders may be adjourned from time to time to reconvene at the same or some other place, and notice need not be given of any such adjourned meeting if the time and place thereof are announced at the meeting at which the adjournment is taken. At the adjourned meeting, the Corporation may transact any business which might have been transacted at the original meeting. If the adjournment is for more than thirty (30) days, or if after the adjournment a new record date is fixed for the adjourned meeting, notice of the adjourned meeting in accordance with the requirements of Section 4 hereof shall be given to each stockholder of record entitled to notice of and to vote at the meeting.

Section 2.6 Quorum. Unless otherwise required by applicable law or the Certificate of Incorporation, the holders of a majority of the Corporation's capital stock issued and outstanding and entitled to vote thereat, present in person or represented by proxy, shall constitute a quorum at all meetings of the stockholders for the transaction of business. A quorum, once established, shall not be broken by the withdrawal of enough votes to leave less than a quorum. If, however, such quorum shall not be present or represented at any meeting of the stockholders, the stockholders entitled to vote thereat, present in person or represented by proxy, shall have power to adjourn the meeting from time to time, in the manner provided in Section 5 hereof, until a quorum shall be present or represented.

Section 2.7 Voting. Unless otherwise required by law, the Certificate of Incorporation or these By-Laws or permitted by the rules of any stock exchange on which the Corporation's shares are listed and traded, any question brought before any meeting of the stockholders, other than the election of directors, shall be decided by the vote of the holders of a majority of the total number of votes of the Corporation's capital stock represented at the meeting and entitled to vote on such question, voting as a single class. Unless otherwise provided in the Certificate of Incorporation, and subject to Section 11(a) of this Article II, each stockholder represented at a meeting of the stockholders shall be entitled to cast one (1) vote for each share of the capital stock entitled to vote thereat held by such stockholder. Such votes may be cast in person or by proxy as provided in Section 8 of this Article II. The Board of Directors, in its discretion, or the officer of the Corporation presiding at a meeting of the stockholders, in such officer's discretion, may require that any votes cast at such meeting shall be cast by written ballot.

Section 2.8 Proxies. Each stockholder entitled to vote at a meeting of the stockholders or to express consent or dissent to corporate action in writing without a meeting may authorize another person or persons to act for such stockholder as proxy, but no such proxy shall be voted upon after three years from its date, unless such proxy provides for a longer period. Without limiting the manner in which a stockholder may authorize another person or persons to act for such stockholder as proxy, the following shall constitute a valid means by which a stockholder may grant such authority:

(i) A stockholder may execute a writing authorizing another person or persons to act for such stockholder as proxy. Execution may be

accomplished by the stockholder or such stockholder's authorized officer, director, employee or agent signing such writing or causing such person's signature to be affixed to such writing by any reasonable means, including, but not limited to, by facsimile signature.

(ii) A stockholder may authorize another person or persons to act for such stockholder as proxy by transmitting or authorizing the transmission of a telegram or cablegram to the person who will be the holder of the proxy or to a proxy solicitation firm, proxy support service organization or like agent duly authorized by the person who will be the holder of the proxy to receive such telegram or cablegram, provided that any such telegram or cablegram must either set forth or be submitted with information from which it can be determined that the telegram or cablegram was authorized by the stockholder. If it is determined that such telegrams or cablegrams are valid, the inspectors or, if there are no inspectors, such other persons making that determination shall specify the information on which they relied.

Any copy, facsimile telecommunication or other reliable reproduction of the writing, telegram or cablegram authorizing another person or persons to act as proxy for a stockholder may be substituted or used in lieu of the original writing, telegram or cablegram for any and all purposes for which the original writing, telegram or cablegram could be used; provided, however, that such copy, facsimile telecommunication or other reproduction shall be a complete reproduction of the entire original writing, telegram or cablegram.

Section 2.9 Consent of Stockholders in Lieu of Meeting. Unless otherwise provided in the Certificate of Incorporation, any action required or permitted to be taken at any Annual or Special Meeting of Stockholders of the Corporation may be taken without a meeting, without prior notice and without a vote, if a consent or consents in writing, setting forth the action so taken, shall be signed by the holders of outstanding stock having not less than the minimum number of votes that would be necessary to authorize or take such action at a meeting at which all shares entitled to vote thereon were present and voted and shall be delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. Every written consent shall bear the date of signature of each stockholder who signs the consent and no written consent shall be effective to take the corporate action referred to therein unless, within sixty (60) days of the earliest dated consent delivered in the manner required by this Section 9 to the Corporation, written consents signed by a sufficient number of holders to take action are delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Any copy, facsimile or other reliable reproduction of a consent in writing may be substituted or used in lieu of the original writing for any and all purposes for which the original writing could be used, provided that such copy, facsimile or other reproduction shall be a complete reproduction of the entire original writing. Prompt notice of the taking of the corporate action without a meeting by less than unanimous written consent shall be given to those stockholders who have

not consented in writing and who, if the action had been taken at a meeting, would have been entitled to notice of the meeting if the record date for such meeting had been the date that written consents signed by a sufficient number of holders to take the action were delivered to the Corporation as provided above in this Section 9.

Section 2.10 List of Stockholders Entitled to Vote. The officer of the Corporation who has charge of the stock ledger of the Corporation shall prepare and make, at least ten (10) days before every meeting of the stockholders, a complete list of the stockholders entitled to vote at the meeting, arranged in alphabetical order, and showing the address of each stockholder and the number of shares registered in the name of each stockholder. Such list shall be open to the examination of any stockholder, for any purpose germane to the meeting, during ordinary business hours, for a period of at least ten (10) days prior to the meeting (i) either at a place within the city where the meeting is to be held, which place shall be specified in the notice of the meeting, or, if not so specified, at the place where the meeting is to be held or (ii) during ordinary business hours, at the principal place of business of the Corporation. The list shall also be produced and kept at the time and place of the meeting during the whole time thereof, and may be inspected by any stockholder who is present.

Section 2.11 Record Date.

(a) In order that the Corporation may determine the stockholders entitled to notice of or to vote at any meeting of the stockholders or any adjournment thereof, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than sixty (60) nor less than ten (10) days before the date of such meeting. If no record date is fixed by the Board of Directors, the record date for determining stockholders entitled to notice of or to vote at a meeting of the stockholders shall be at the close of business on the day next preceding the day on which notice is given, or, if notice is waived, at the close of business on the day next preceding the day on which the meeting is held. A determination of stockholders of record entitled to notice of or to vote at a meeting of the stockholders shall apply to any adjournment of the meeting; provided, however, that the Board of Directors may fix a new record date for the adjourned meeting.

(b) In order that the Corporation may determine the stockholders entitled to consent to corporate action in writing without a meeting, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted by the Board of Directors, and which record date shall not be more than ten (10) days after the date upon which the resolution fixing the record date is adopted by the Board of Directors. If no record date has been fixed by the Board of Directors, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting, when no prior action by the Board of Directors is required by applicable law, shall be the first date on which a signed written consent setting forth the action taken or proposed to be taken is delivered to the Corporation by delivery to its registered office in the State of Delaware, its principal place of business, or an officer or agent of the Corporation having custody of the book in which proceedings of meetings of the stockholders are recorded. Delivery made to the Corporation's registered office shall be by hand or by certified or registered mail, return receipt requested. If no record date has been fixed by the Board of Directors and prior action by the

Board of Directors is required by applicable law, the record date for determining stockholders entitled to consent to corporate action in writing without a meeting shall be at the close of business on the day on which the Board of Directors adopts the resolution taking such prior action.

Section 2.12 Stock Ledger. The stock ledger of the Corporation shall be the only evidence as to who are the stockholders entitled to examine the stock ledger, the list required by Section 10 of this Article II or the books of the Corporation, or to vote in person or by proxy at any meeting of the stockholders.

Section 2.13 Conduct of Meetings. The Board of Directors of the Corporation may adopt by resolution such rules and regulations for the conduct of any meeting of the stockholders as it shall deem appropriate. Except to the extent inconsistent with such rules and regulations as adopted by the Board of Directors, the chairman of any meeting of the stockholders shall have the right and authority to prescribe such rules, regulations and procedures and to do all such acts as, in the judgment of such chairman, are appropriate for the proper conduct of the meeting. Such rules, regulations or procedures, whether adopted by the Board of Directors or prescribed by the chairman of the meeting, may include, without limitation, the following: (i) the establishment of an agenda or order of business for the meeting; (ii) the determination of when the polls shall open and close for any given matter to be voted on at the meeting; (iii) rules and procedures for maintaining order at the meeting and the safety of those present; (iv) limitations on attendance at or participation in the meeting to stockholders of record of the Corporation, their duly authorized and constituted proxies or such other persons as the chairman of the meeting shall determine; (v) restrictions on entry to the meeting after the time fixed for the commencement thereof; and (vi) limitations on the time allotted to questions or comments by participants.

ARTICLE III

DIRECTORS

Section 3.1 Number and Election of Directors. The Board of Directors shall consist of not less than one nor more than fifteen members, the exact number of which shall initially be fixed by the Incorporator and thereafter from time to time by the Board of Directors. Except as provided in Section 2 of this Article III, directors shall be elected by a plurality of the votes cast at each Annual Meeting of Stockholders and each director so elected shall hold office until the next Annual Meeting of Stockholders and until such director's successor is duly elected and qualified, or until such director's earlier death, resignation or removal. Directors need not be stockholders.

Section 3.2 Vacancies. Unless otherwise required by law or the Certificate of Incorporation, vacancies on the Board of Directors or any committee thereof arising through death, resignation, removal, an increase in the number of directors constituting the Board of Directors or such committee or otherwise may be filled only by a majority of the directors then in office, though less than a quorum, or by a sole remaining director. The directors so chosen shall, in the case of the Board of Directors, hold office until the next annual election and until their successors are duly elected and qualified, or until their earlier death, resignation or removal

and, in the case of any committee of the Board of Directors, shall hold office until their successors are duly appointed by the Board of Directors or until their earlier death, resignation or removal.

Section 3.3 Duties and Powers. The business and affairs of the Corporation shall be managed by or under the direction of the Board of Directors which may exercise all such powers of the Corporation and do all such lawful acts and things as are not by statute or by the Certificate of Incorporation or by these By-Laws required to be exercised or done by the stockholders.

Section 3.4 Meetings. The Board of Directors and any committee thereof may hold meetings, both regular and special, either within or without the State of Delaware. Regular meetings of the Board of Directors or any committee thereof may be held without notice at such time and at such place as may from time to time be determined by the Board of Directors or such committee, respectively. Special meetings of the Board of Directors may be called by the Chairman, if there be one, the President, or by any director. Special meetings of any committee of the Board of Directors may be called by the chairman of such committee, if there be one, the President, or any director serving on such committee. Notice thereof stating the place, date and hour of the meeting shall be given to each director (or, in the case of a committee, to each member of such committee) either by mail not less than forty-eight (48) hours before the date of the meeting, by telephone or telegram on twenty-four (24) hours' notice, or on such shorter notice as the person or persons calling such meeting may deem necessary or appropriate in the circumstances.

Section 3.5 Organization. At each meeting of the Board of Directors or any committee thereof, the Chairman of the Board of Directors or the chairman of such committee, as the case may be, or, in his or her absence or if there be none, a director chosen by a majority of the directors present, shall act as chairman. Except as provided below, the Secretary of the Corporation shall act as secretary at each meeting of the Board of Directors and of each committee thereof. In case the Secretary shall be absent from any meeting of the Board of Directors or of any committee thereof, an Assistant Secretary shall perform the duties of secretary at such meeting; and in the absence from any such meeting of the Secretary and all the Assistant Secretaries, the chairman of the meeting may appoint any person to act as secretary of the meeting. Notwithstanding the foregoing, the members of each committee of the Board of Directors may appoint any person to act as secretary of any meeting of such committee and the Secretary or any Assistant Secretary of the Corporation may, but need not if such committee so elects, serve in such capacity.

Section 3.6 Resignations and Removals of Directors. Any director of the Corporation may resign from the Board of Directors or any committee thereof at any time, by giving notice in writing to the Chairman of the Board of Directors, if there be one, the President or the Secretary of the Corporation and, in the case of a committee, to the chairman of such committee, if there be one. Such resignation shall take effect at the time therein specified or, if no time is specified, immediately; and, unless otherwise specified in such notice, the acceptance of such resignation shall not be necessary to make it effective. Except as otherwise required by applicable law and subject to the rights, if any, of the holders of shares of preferred stock then outstanding, any director or the entire Board of Directors may be removed from office at any

time by the affirmative vote of the holders of at least a majority in voting power of the issued and outstanding capital stock of the Corporation entitled to vote in the election of directors. Any director serving on a committee of the Board of Directors may be removed from such committee at any time by the Board of Directors.

Section 3.7 Quorum. Except as otherwise required by law, the Certificate of Incorporation or the rules and regulations of any securities exchange or quotation system on which the Corporation's securities are listed or quoted for trading, at all meetings of the Board of Directors or any committee thereof, a majority of the entire Board of Directors or a majority of the directors constituting such committee, as the case may be, shall constitute a quorum for the transaction of business and the act of a majority of the directors or committee members present at any meeting at which there is a quorum shall be the act of the Board of Directors or such committee, as applicable. If a quorum shall not be present at any meeting of the Board of Directors or any committee thereof, the directors present thereat may adjourn the meeting from time to time, without notice other than announcement at the meeting of the time and place of the adjourned meeting, until a quorum shall be present.

Section 3.8 Actions of the Board by Written Consent. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, any action required or permitted to be taken at any meeting of the Board of Directors or of any committee thereof may be taken without a meeting, if all the members of the Board of Directors or such committee, as the case may be, consent thereto in writing, and the writing or writings are filed with the minutes of proceedings of the Board of Directors or such committee.

Section 3.9 Meetings by Means of Conference Telephone. Unless otherwise provided in the Certificate of Incorporation or these By-Laws, members of the Board of Directors of the Corporation, or any committee thereof, may participate in a meeting of the Board of Directors or such committee by means of a conference telephone or other communications equipment by means of which all persons participating in the meeting can hear each other, and participation in a meeting pursuant to this Section 9 shall constitute presence in person at such meeting.

Section 3.10 Committees. The Board of Directors may designate one or more committees, each committee to consist of one or more of the directors of the Corporation. Each member of a committee must meet the requirements for membership, if any, imposed by applicable law and the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading. The Board of Directors may designate one or more directors as alternate members of any committee, who may replace any absent or disqualified member at any meeting of any such committee. Subject to the rules and regulations of any securities exchange or quotation system on which the securities of the Corporation are listed or quoted for trading, in the absence or disqualification of a member of a committee, and in the absence of a designation by the Board of Directors of an alternate member to replace the absent or disqualified member, the member or members thereof present at any meeting and not disqualified from voting, whether or not such member or members constitute a quorum, may unanimously appoint another qualified member of the Board of Directors to act at the meeting in the place of any absent or disqualified member. Any committee, to the extent permitted by law and provided in the resolution establishing such committee, shall have and may

exercise all the powers and authority of the Board of Directors in the management of the business and affairs of the Corporation, and may authorize the seal of the Corporation to be affixed to all papers which may require it. Each committee shall keep regular minutes and report to the Board of Directors when required. Notwithstanding anything to the contrary contained in this Article III, the resolution of the Board of Directors establishing any committee of the Board of Directors and/or the charter of any such committee may establish requirements or procedures relating to the governance and/or operation of such committee that are different from, or in addition to, those set forth in these By-Laws and, to the extent that there is any inconsistency between these By-Laws and any such resolution or charter, the terms of such resolution or charter shall be controlling.

Section 3.11 Compensation. The directors may be paid their expenses, if any, of attendance at each meeting of the Board of Directors and may be paid a fixed sum for attendance at each meeting of the Board of Directors or a stated salary for service as director, payable in cash or securities. No such payment shall preclude any director from serving the Corporation in any other capacity and receiving compensation therefor. Members of special or standing committees may be allowed like compensation for service as committee members.

Section 3.12 Interested Directors. No contract or transaction between the Corporation and one or more of its directors or officers, or between the Corporation and any other corporation, partnership, association or other organization in which one or more of its directors or officers are directors or officers or have a financial interest, shall be void or voidable solely for this reason, or solely because the director or officer is present at or participates in the meeting of the Board of Directors or committee thereof which authorizes the contract or transaction, or solely because any such director's or officer's vote is counted for such purpose if: (i) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the Board of Directors or the committee, and the Board of Directors or committee in good faith authorizes the contract or transaction by the affirmative votes of a majority of the disinterested directors, even though the disinterested directors be less than a quorum; or (ii) the material facts as to the director's or officer's relationship or interest and as to the contract or transaction are disclosed or are known to the stockholders entitled to vote thereon, and the contract or transaction is specifically approved in good faith by vote of the stockholders; or (iii) the contract or transaction is fair as to the Corporation as of the time it is authorized, approved or ratified by the Board of Directors, a committee thereof or the stockholders. Common or interested directors may be counted in determining the presence of a quorum at a meeting of the Board of Directors or of a committee which authorizes the contract or transaction.

ARTICLE IV

OFFICERS

Section 4.1 General. The officers of the Corporation shall be chosen by the Board of Directors and shall be a President, a Secretary and a Treasurer. The Board of Directors, in its discretion, also may choose a Chairman of the Board of Directors (who must be a director) and one or more Vice Presidents, Assistant Secretaries, Assistant Treasurers and other officers. Any number of offices may be held by the same person, unless otherwise prohibited by law, the

Certificate of Incorporation or these By-Laws. The officers of the Corporation need not be stockholders of the Corporation nor, except in the case of the Chairman of the Board of Directors, need such officers be directors of the Corporation.

Section 4.2 Election. The Board of Directors, at its first meeting held after each Annual Meeting of Stockholders (or action by written consent of stockholders in lieu of the Annual Meeting of Stockholders), shall elect the officers of the Corporation who shall hold their offices for such terms and shall exercise such powers and perform such duties as shall be determined from time to time by the Board of Directors; and each officer of the Corporation shall hold office until such officer's successor is elected and qualified, or until such officer's earlier death, resignation or removal. Any officer elected by the Board of Directors may be removed at any time by the Board of Directors. Any vacancy occurring in any office of the Corporation shall be filled by the Board of Directors. The salaries of all officers of the Corporation shall be fixed by the Board of Directors.

Section 4.3 Voting Securities Owned by the Corporation. Powers of attorney, proxies, waivers of notice of meeting, consents and other instruments relating to securities owned by the Corporation may be executed in the name of and on behalf of the Corporation by the President or any Vice President or any other officer authorized to do so by the Board of Directors and any such officer may, in the name of and on behalf of the Corporation, take all such action as any such officer may deem advisable to vote in person or by proxy at any meeting of security holders of any corporation in which the Corporation may own securities and at any such meeting shall possess and may exercise any and all rights and power incident to the ownership of such securities and which, as the owner thereof, the Corporation might have exercised and possessed if present. The Board of Directors may, by resolution, from time to time confer like powers upon any other person or persons.

Section 4.4 Chairman of the Board of Directors. The Chairman of the Board of Directors, if there be one, shall preside at all meetings of the stockholders and of the Board of Directors. The Chairman of the Board of Directors shall be the Chief Executive Officer of the Corporation, unless the Board of Directors designates the President as the Chief Executive Officer, and, except where by law the signature of the President is required, the Chairman of the Board of Directors shall possess the same power as the President to sign all contracts, certificates and other instruments of the Corporation which may be authorized by the Board of Directors. During the absence or disability of the President, the Chairman of the Board of Directors shall exercise all the powers and discharge all the duties of the President. The Chairman of the Board of Directors shall also perform such other duties and may exercise such other powers as may from time to time be assigned by these By-Laws or by the Board of Directors.

Section 4.5 President. The President shall, subject to the control of the Board of Directors and, if there be one, the Chairman of the Board of Directors, have general supervision of the business of the Corporation and shall see that all orders and resolutions of the Board of Directors are carried into effect. The President shall execute all bonds, mortgages, contracts and other instruments of the Corporation requiring a seal, under the seal of the Corporation, except where required or permitted by law to be otherwise signed and executed and except that the other officers of the Corporation may sign and execute documents when so authorized by these By-Laws, the Board of Directors or the President. In the absence or

disability of the Chairman of the Board of Directors, or if there be none, the President shall preside at all meetings of the stockholders and, provided the President is also a director, the Board of Directors. If there be no Chairman of the Board of Directors, or if the Board of Directors shall otherwise designate, the President shall be the Chief Executive Officer of the Corporation. The President shall also perform such other duties and may exercise such other powers as may from time to time be assigned to such officer by these By-Laws or by the Board of Directors.

Section 4.6 Vice Presidents. At the request of the President or in the President's absence or in the event of the President's inability or refusal to act (and if there be no Chairman of the Board of Directors), the Vice President, or the Vice Presidents if there are more than one (in the order designated by the Board of Directors), shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President. Each Vice President shall perform such other duties and have such other powers as the Board of Directors from time to time may prescribe. If there be no Chairman of the Board of Directors and no Vice President, the Board of Directors shall designate the officer of the Corporation who, in the absence of the President or in the event of the inability or refusal of the President to act, shall perform the duties of the President, and when so acting, shall have all the powers of and be subject to all the restrictions upon the President.

Section 4.7 Secretary. The Secretary shall attend all meetings of the Board of Directors and all meetings of the stockholders and record all the proceedings thereat in a book or books to be kept for that purpose; the Secretary shall also perform like duties for committees of the Board of Directors when required. The Secretary shall give, or cause to be given, notice of all meetings of the stockholders and special meetings of the Board of Directors, and shall perform such other duties as may be prescribed by the Board of Directors, the Chairman of the Board of Directors or the President, under whose supervision the Secretary shall be. If the Secretary shall be unable or shall refuse to cause to be given notice of all meetings of the stockholders and special meetings of the Board of Directors, and if there be no Assistant Secretary, then either the Board of Directors or the President may choose another officer to cause such notice to be given. The Secretary shall have custody of the seal of the Corporation and the Secretary or any Assistant Secretary, if there be one, shall have authority to affix the same to any instrument requiring it and when so affixed, it may be attested by the signature of the Secretary or by the signature of any such Assistant Secretary. The Board of Directors may give general authority to any other officer to affix the seal of the Corporation and to attest to the affixing by such officer's signature. The Secretary shall see that all books, reports, statements, certificates and other documents and records required by law to be kept or filed are properly kept or filed, as the case may be.

Section 4.8 Treasurer. The Treasurer shall have the custody of the corporate funds and securities and shall keep full and accurate accounts of receipts and disbursements in books belonging to the Corporation and shall deposit all moneys and other valuable effects in the name and to the credit of the Corporation in such depositories as may be designated by the Board of Directors. The Treasurer shall disburse the funds of the Corporation as may be ordered by the Board of Directors, taking proper vouchers for such disbursements, and shall render to the President and the Board of Directors, at its regular meetings, or when the Board of Directors so requires, an account of all transactions as Treasurer and of the financial condition of the

Corporation. If required by the Board of Directors, the Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of the Treasurer and for the restoration to the Corporation, in case of the Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Treasurer's possession or under the Treasurer's control belonging to the Corporation.

Section 4.9 Assistant Secretaries. Assistant Secretaries, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Secretary, and in the absence of the Secretary or in the event of the Secretary's inability or refusal to act, shall perform the duties of the Secretary, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Secretary.

Section 4.10 Assistant Treasurers. Assistant Treasurers, if there be any, shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors, the President, any Vice President, if there be one, or the Treasurer, and in the absence of the Treasurer or in the event of the Treasurer's inability or refusal to act, shall perform the duties of the Treasurer, and when so acting, shall have all the powers of and be subject to all the restrictions upon the Treasurer. If required by the Board of Directors, an Assistant Treasurer shall give the Corporation a bond in such sum and with such surety or sureties as shall be satisfactory to the Board of Directors for the faithful performance of the duties of the office of Assistant Treasurer and for the restoration to the Corporation, in case of the Assistant Treasurer's death, resignation, retirement or removal from office, of all books, papers, vouchers, money and other property of whatever kind in the Assistant Treasurer's possession or under the Assistant Treasurer's control belonging to the Corporation.

Section 4.11 Other Officers. Such other officers as the Board of Directors may choose shall perform such duties and have such powers as from time to time may be assigned to them by the Board of Directors. The Board of Directors may delegate to any other officer of the Corporation the power to choose such other officers and to prescribe their respective duties and powers.

ARTICLE V

STOCK

Section 5.1 Form of Certificates. Every holder of stock in the Corporation shall be entitled to have a certificate signed by, or in the name of the Corporation (i) by the Chairman of the Board of Directors, or the President or a Vice President and (ii) by the Treasurer or an Assistant Treasurer, or the Secretary or an Assistant Secretary of the Corporation, certifying the number of shares owned by such stockholder in the Corporation.

Section 5.2 Signatures. Any or all of the signatures on a certificate may be a facsimile. In case any officer, transfer agent or registrar who has signed or whose facsimile signature has been placed upon a certificate shall have ceased to be such officer, transfer agent or

registrar before such certificate is issued, it may be issued by the Corporation with the same effect as if such person were such officer, transfer agent or registrar at the date of issue.

Section 5.3 Lost Certificates. The Board of Directors may direct a new certificate to be issued in place of any certificate theretofore issued by the Corporation alleged to have been lost, stolen or destroyed, upon the making of an affidavit of that fact by the person claiming the certificate of stock to be lost, stolen or destroyed. When authorizing such issuance of a new certificate, the Board of Directors may, in its discretion and as a condition precedent to the issuance thereof, require the owner of such lost, stolen or destroyed certificate, or such owner's legal representative, to advertise the same in such manner as the Board of Directors shall require and/or to give the Corporation a bond in such sum as it may direct as indemnity against any claim that may be made against the Corporation on account of the alleged loss, theft or destruction of such certificate or the issuance of such new certificate.

Section 5.4 Transfers. Stock of the Corporation shall be transferable in the manner prescribed by applicable law and in these By-Laws. Transfers of stock shall be made on the books of the Corporation only by the person named in the certificate or by such person's attorney lawfully constituted in writing and upon the surrender of the certificate therefor, properly endorsed for transfer and payment of all necessary transfer taxes; provided, however, that such surrender and endorsement or payment of taxes shall not be required in any case in which the officers of the Corporation shall determine to waive such requirement. Every certificate exchanged, returned or surrendered to the Corporation shall be marked "Cancelled," with the date of cancellation, by the Secretary or Assistant Secretary of the Corporation or the transfer agent thereof. No transfer of stock shall be valid as against the Corporation for any purpose until it shall have been entered in the stock records of the Corporation by an entry showing from and to whom transferred.

Section 5.5 Dividend Record Date. In order that the Corporation may determine the stockholders entitled to receive payment of any dividend or other distribution or allotment of any rights or the stockholders entitled to exercise any rights in respect of any change, conversion or exchange of stock, or for the purpose of any other lawful action, the Board of Directors may fix a record date, which record date shall not precede the date upon which the resolution fixing the record date is adopted, and which record date shall be not more than sixty (60) days prior to such action. If no record date is fixed, the record date for determining stockholders for any such purpose shall be at the close of business on the day on which the Board of Directors adopts the resolution relating thereto.

Section 5.6 Record Owners. The Corporation shall be entitled to recognize the exclusive right of a person registered on its books as the owner of shares to receive dividends, and to vote as such owner, and to hold liable for calls and assessments a person registered on its books as the owner of shares, and shall not be bound to recognize any equitable or other claim to or interest in such share or shares on the part of any other person, whether or not it shall have express or other notice thereof, except as otherwise required by law.

Section 5.7 Transfer and Registry Agents. The Corporation may from time to time maintain one or more transfer offices or agencies and registry offices or agencies at such place or places as may be determined from time to time by the Board of Directors.

ARTICLE VI

NOTICES

Section 6.1 Notices. Whenever written notice is required by law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, such notice may be given by mail, addressed to such director, member of a committee or stockholder, at such person's address as it appears on the records of the Corporation, with postage thereon prepaid, and such notice shall be deemed to be given at the time when the same shall be deposited in the United States mail. Written notice may also be given personally or by telegram, telex or cable.

Section 6.2 Waivers of Notice. Whenever any notice is required by applicable law, the Certificate of Incorporation or these By-Laws, to be given to any director, member of a committee or stockholder, a waiver thereof in writing, signed by the person or persons entitled to notice, whether before or after the time stated therein, shall be deemed equivalent thereto. Attendance of a person at a meeting, present in person or represented by proxy, shall constitute a waiver of notice of such meeting, except where the person attends the meeting for the express purpose of objecting at the beginning of the meeting to the transaction of any business because the meeting is not lawfully called or convened. Neither the business to be transacted at, nor the purpose of, any Annual or Special Meeting of Stockholders or any regular or special meeting of the directors or members of a committee of directors need be specified in any written waiver of notice unless so required by law, the Certificate of Incorporation or these By-Laws.

ARTICLE VII

GENERAL PROVISIONS

Section 7.1 Dividends. Dividends upon the capital stock of the Corporation, subject to the requirements of the General Corporation Law of the State of Delaware (the "DGCL") and the provisions of the Certificate of Incorporation, if any, may be declared by the Board of Directors at any regular or special meeting of the Board of Directors (or any action by written consent in lieu thereof in accordance with Section 8 of Article III hereof), and may be paid in cash, in property, or in shares of the Corporation's capital stock. Before payment of any dividend, there may be set aside out of any funds of the Corporation available for dividends such sum or sums as the Board of Directors from time to time, in its absolute discretion, deems proper as a reserve or reserves to meet contingencies, or for purchasing any of the shares of capital stock, warrants, rights, options, bonds, debentures, notes, scrip or other securities or evidences of indebtedness of the Corporation, or for equalizing dividends, or for repairing or maintaining any property of the Corporation, or for any proper purpose, and the Board of Directors may modify or abolish any such reserve.

Section 7.2 Disbursements. All checks or demands for money and notes of the Corporation shall be signed by such officer or officers or such other person or persons as the Board of Directors may from time to time designate.

Section 7.3 Fiscal Year. The fiscal year of the Corporation shall be fixed by resolution of the Board of Directors.

Section 7.4 Corporate Seal. The corporate seal shall have inscribed thereon the name of the Corporation, the year of its organization and the words "Corporate Seal, Delaware". The seal may be used by causing it or a facsimile thereof to be impressed or affixed or reproduced or otherwise.

ARTICLE VIII

INDEMNIFICATION

Section 8.1 Power to Indemnify in Actions, Suits or Proceedings other than Those by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, from and after the Effective Date, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action, suit or proceeding, whether civil, criminal, administrative or investigative (other than an action by or in the right of the Corporation), by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees), judgments, fines and amounts paid in settlement actually and reasonably incurred by such person in connection with such action, suit or proceeding if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had no reasonable cause to believe such person's conduct was unlawful; provided, however, the foregoing shall only relate to matters that exist on or after the date hereof. The termination of any action, suit or proceeding by judgment, order, settlement, conviction, or upon a plea of nolo contendere or its equivalent, shall not, of itself, create a presumption that the person did not act in good faith and in a manner which such person reasonably believed to be in or not opposed to the best interests of the Corporation, and, with respect to any criminal action or proceeding, had reasonable cause to believe that such person's conduct was unlawful. "Effective Date" shall be as defined in the Plan on the date hereof. "Plan" shall mean the Debtors' Amended Joint Prearranged Chapter 11 Plan pursuant to Chapter 11 of the Bankruptcy Code, filed on September 4, 2015.

Section 8.2 Power to Indemnify in Actions, Suits or Proceedings by or in the Right of the Corporation. Subject to Section 3 of this Article VIII, from and after the Effective Date, the Corporation shall indemnify any person who was or is a party or is threatened to be made a party to any threatened, pending or completed action or suit by or in the right of the Corporation to procure a judgment in its favor by reason of the fact that such person is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection with the defense or settlement of such action or suit if such person acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation; provided, however, the foregoing shall only relate to matters that exist on or after the date hereof; except that no

indemnification shall be made in respect of any claim, issue or matter as to which such person shall have been adjudged to be liable to the Corporation unless and only to the extent that the Court of Chancery of the State of Delaware or the court in which such action or suit was brought shall determine upon application that, despite the adjudication of liability but in view of all the circumstances of the case, such person is fairly and reasonably entitled to indemnity for such expenses which the Court of Chancery or such other court shall deem proper.

Section 8.3 Authorization of Indemnification. Any indemnification under this Article VIII (unless ordered by a court) shall be made by the Corporation only as authorized in the specific case upon a determination that indemnification of the present or former director or officer is proper in the circumstances because such person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Such determination shall be made, with respect to a person who is a director or officer at the time of such determination, (i) by a majority vote of the directors who are not parties to such action, suit or proceeding, even though less than a quorum, or (ii) by a committee of such directors designated by a majority vote of such directors, even though less than a quorum, or (iii) if there are no such directors, or if such directors so direct, by independent legal counsel in a written opinion or (iv) by the stockholders. Such determination shall be made, with respect to former directors and officers, by any person or persons having the authority to act on the matter on behalf of the Corporation. To the extent, however, that a present or former director or officer of the Corporation has been successful on the merits or otherwise in defense of any action, suit or proceeding described above, or in defense of any claim, issue or matter therein, such person shall be indemnified against expenses (including attorneys' fees) actually and reasonably incurred by such person in connection therewith, without the necessity of authorization in the specific case.

Section 8.4 Good Faith Defined. For purposes of any determination under Section 3 of this Article VIII, a person shall be deemed to have acted in good faith and in a manner such person reasonably believed to be in or not opposed to the best interests of the Corporation, or, with respect to any criminal action or proceeding, to have had no reasonable cause to believe such person's conduct was unlawful, if such person's action is based on the records or books of account of the Corporation or another enterprise, or on information supplied to such person by the officers of the Corporation or another enterprise in the course of their duties, or on the advice of legal counsel for the Corporation or another enterprise or on information or records given or reports made to the Corporation or another enterprise by an independent certified public accountant or by an appraiser or other expert selected with reasonable care by the Corporation or another enterprise. The provisions of this Section 4 shall not be deemed to be exclusive or to limit in any way the circumstances in which a person may be deemed to have met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be.

Section 8.5 Indemnification by a Court. Notwithstanding any contrary determination in the specific case under Section 3 of this Article VIII, and notwithstanding the absence of any determination thereunder, any director or officer may apply to the Court of Chancery of the State of Delaware or any other court of competent jurisdiction in the State of Delaware for indemnification to the extent otherwise permissible under Section 1 or Section 2 of this Article VIII. The basis of such indemnification by a court shall be a determination by such court that indemnification of the director or officer is proper in the circumstances because such

person has met the applicable standard of conduct set forth in Section 1 or Section 2 of this Article VIII, as the case may be. Neither a contrary determination in the specific case under Section 3 of this Article VIII nor the absence of any determination thereunder shall be a defense to such application or create a presumption that the director or officer seeking indemnification has not met any applicable standard of conduct. Notice of any application for indemnification pursuant to this Section 5 shall be given to the Corporation promptly upon the filing of such application. If successful, in whole or in part, the director or officer seeking indemnification shall also be entitled to be paid the expense of prosecuting such application.

Section 8.6 Expenses Payable in Advance. Expenses (including attorneys' fees) incurred by a director or officer in defending any civil, criminal, administrative or investigative action, suit or proceeding shall be paid by the Corporation in advance of the final disposition of such action, suit or proceeding upon receipt of an undertaking by or on behalf of such director or officer to repay such amount if it shall ultimately be determined that such person is not entitled to be indemnified by the Corporation as authorized in this Article VIII. Such expenses (including attorneys' fees) incurred by former directors and officers or other employees and agents may be so paid upon such terms and conditions, if any, as the Corporation deems appropriate.

Section 8.7 Nonexclusivity of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall not be deemed exclusive of any other rights to which those seeking indemnification or advancement of expenses may be entitled under the Certificate of Incorporation, these By-Laws, agreement, vote of stockholders or disinterested directors or otherwise, both as to action in such person's official capacity and as to action in another capacity while holding such office, it being the policy of the Corporation that indemnification of the persons specified in Section 1 and Section 2 of this Article VIII shall be made to the fullest extent permitted by law. The provisions of this Article VIII shall not be deemed to preclude the indemnification of any person who is not specified in Section 1 or Section 2 of this Article VIII but whom the Corporation has the power or obligation to indemnify under the provisions of the DGCL, or otherwise.

Section 8.8 Insurance. The Corporation may purchase and maintain insurance on behalf of any person who is or was a director or officer of the Corporation, or is or was a director or officer of the Corporation serving at the request of the Corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise against any liability asserted against such person and incurred by such person in any such capacity, or arising out of such person's status as such, whether or not the Corporation would have the power or the obligation to indemnify such person against such liability under the provisions of this Article VIII.

Section 8.9 Certain Definitions. For purposes of this Article VIII, references to "the Corporation" shall include, in addition to the resulting corporation, any constituent corporation (including any constituent of a constituent) absorbed in a consolidation or merger which, if its separate existence had continued, would have had power and authority to indemnify its directors or officers, so that any person who is or was a director or officer of such constituent corporation, or is or was a director or officer of such constituent corporation serving at the

request of such constituent corporation as a director, officer, employee or agent of another corporation, partnership, joint venture, trust or other enterprise, shall stand in the same position under the provisions of this Article VIII with respect to the resulting or surviving corporation as such person would have with respect to such constituent corporation if its separate existence had continued. The term "another enterprise" as used in this Article VIII shall mean any other corporation or any partnership, joint venture, trust, employee benefit plan or other enterprise of which such person is or was serving at the request of the Corporation as a director, officer, employee or agent. For purposes of this Article VIII, references to "fines" shall include any excise taxes assessed on a person with respect to an employee benefit plan; and references to "serving at the request of the Corporation" shall include any service as a director, officer, employee or agent of the Corporation which imposes duties on, or involves services by, such director or officer with respect to an employee benefit plan, its participants or beneficiaries; and a person who acted in good faith and in a manner such person reasonably believed to be in the interest of the participants and beneficiaries of an employee benefit plan shall be deemed to have acted in a manner "not opposed to the best interests of the Corporation" as referred to in this Article VIII.

Section 8.10 Survival of Indemnification and Advancement of Expenses. The indemnification and advancement of expenses provided by, or granted pursuant to, this Article VIII shall, unless otherwise provided when authorized or ratified, continue as to a person who has ceased to be a director or officer and shall inure to the benefit of the heirs, executors and administrators of such a person.

Section 8.11 Limitation on Indemnification. Notwithstanding anything contained in this Article VIII to the contrary, except for proceedings to enforce rights to indemnification (which shall be governed by Section 5 of this Article VIII), the Corporation shall not be obligated to indemnify any director or officer (or his or her heirs, executors or personal or legal representatives) or advance expenses in connection with a proceeding (or part thereof) initiated by such person unless such proceeding (or part thereof) was authorized or consented to by the Board of Directors of the Corporation.

Section 8.12 Indemnification of Employees and Agents. The Corporation may, to the extent authorized from time to time by the Board of Directors, provide rights to indemnification and to the advancement of expenses to employees and agents of the Corporation similar to those conferred in this Article VIII to directors and officers of the Corporation.

ARTICLE IX

FORUM FOR ADJUDICATION OF CERTAIN DISPUTES

Section 9.1 Forum for Adjudication of Certain Disputes. Unless the Corporation consents in writing to the selection of an alternative forum (an "Alternative Forum Consent"), the Court of Chancery of the State of Delaware shall be the sole and exclusive forum for (i) any derivative action or proceeding brought on behalf of the Corporation, (ii) any action asserting a claim of breach of a fiduciary duty owed by any director, officer, stockholder, employee or agent of the Corporation to the Corporation or the Corporation's stockholders, (iii) any action asserting a claim against the Corporation or any director, officer, stockholder,

employee or agent of the Corporation arising out of or relating to any provision of the General Corporation Law of Delaware or the Corporation's Certificate of Incorporation or Bylaws, or (iv) any action asserting a claim against the Corporation or any director, officer, stockholder, employee or agent of the Corporation governed by the internal affairs doctrine of the State of Delaware; *provided, however*, that, in the event that the Court of Chancery of the State of Delaware lacks subject matter jurisdiction over any such action or proceeding, the sole and exclusive forum for such action or proceeding shall be another state or federal court located within the State of Delaware, in each such case, unless the Court of Chancery (or such other state or federal court located within the State of Delaware, as applicable) has dismissed a prior action by the same plaintiff asserting the same claims because such court lacked personal jurisdiction over an indispensable party named as a defendant therein. Failure to enforce the foregoing provisions would cause the Corporation irreparable harm and the Corporation shall be entitled to equitable relief, including injunctive relief and specific performance, to enforce the foregoing provisions. Any person or entity purchasing or otherwise acquiring any interest in shares of capital stock of the Corporation shall be deemed to have notice of and consented to the provisions of this Section 9.1 of Article IX. The existence of any prior Alternative Forum Consent shall not act as a waiver of the Corporation's ongoing consent right as set forth above in this Section 9.1 of Article IX with respect to any current or future actions or claims.

ARTICLE X

OTHER INDEMNITY

Section 10.1 Indemnity. To the extent required by the Plan, solely with respect to the current directors, officers and employees that existed on the date hereof and solely with respect to matters prior to the date hereof, indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses rights, if any, contained in the Corporation's Certificate of Incorporation and Bylaws immediately prior to the Effective Date of the Plan, shall continue in the same manner that they exist on the date hereof, against any claims or Causes of Action whether direct or derivative, liquidated or unliquidated, fixed or contingent, disputed or undisputed, matured or unmatured, known or unknown, foreseen or unforeseen, asserted or unasserted. "Cause of Action" shall be as defined in the Plan on the date hereof.

ARTICLE XI

AMENDMENTS

Section 11.1 Amendments. These By-Laws may be altered, amended or repealed, in whole or in part, or new By-Laws may be adopted by the stockholders or by the Board of Directors; provided, however, that notice of such alteration, amendment, repeal or adoption of new By-Laws be contained in the notice of such meeting of the stockholders or Board of Directors, as the case may be. All such amendments must be approved by either the holders of a majority of the outstanding capital stock entitled to vote thereon or by a majority of the entire Board of Directors then in office.

Section 11.2 Entire Board of Directors. As used in this Article XI and in these By-Laws generally, the term "entire Board of Directors" means the total number of directors which the Corporation would have if there were no vacancies.

* * *

Adopted as of: _____

Last Amended as of: _____

EXHIBIT 19

Amended and Restated Limited Liability Company Agreement of BTCSP, LLC

AMENDED AND RESTATED

LIMITED LIABILITY COMPANY AGREEMENT

OF

BTCSP, LLC

THIS AMENDED AND RESTATED LIMITED LIABILITY COMPANY AGREEMENT (the "Agreement") of BTCSP, LLC (the "Company") is entered into and effective as of the [•] day of [•], 2015, by Boomerang Tube, LLC, as the sole member of the Company (the "Member").

RECITAL

WHEREAS, the Company was formed as a limited liability company under the laws of the State of Delaware on January 24, 2008, and in accordance with the provisions of the Delaware Limited Liability Company Act and any successor statute, as amended from time to time (the "Act"), the Member entered into a Limited Liability Company Agreement, dated as of January 24, 2008 (the "Original LLC Agreement") to govern the affairs of the Company and the conduct of its business; and

WHEREAS, the Member desires to continue the Company in accordance with the provisions of the Act and desires to amend and restate the Original LLC Agreement of the Company as set forth herein.

NOW THEREFORE, the Member hereby agrees as follows:

ARTICLE 1
The Limited Liability Company

1.1 Formation. The Member has previously formed the Company as a limited liability company pursuant to the provisions of the Act. A certificate of formation for the Company as described in Section 18-201 of the Act (the "Certificate of Formation") has been filed in the Office of the Secretary of State of the State of Delaware in conformity with the Act.

1.2 Name. The name of the Company shall be "BTCSP, LLC" and its business shall be carried on in such name with such variations and changes as the

Member shall determine or deem necessary to comply with requirements of the jurisdictions in which the Company's operations are conducted.

1.3 Business Purpose; Powers. The Company is formed for the purpose of engaging in any lawful business, purpose or activity for which limited liability companies may be formed under the Act. The Company shall possess and may exercise all the powers and privileges granted by the Act or by any other law or by this Agreement, together with any powers incidental thereto, so far as such powers and privileges are necessary or convenient to the conduct, promotion or attainment of the business purposes or activities of the Company.

1.4 Registered Office and Agent. The location of the registered office of the Company shall be [•]. The Company's Registered Agent at such address shall be [•].

1.6 Term. Subject to the provisions of Article 6 below, the Company shall have perpetual existence.

ARTICLE 2
The Member

2.1 The Member. The name and address of the Member are as follows:

Name	Address
Boomerang Tube, LLC	14567 N. Outer Forty Road, 5th Floor Chesterfield, Missouri 63017

2.2 Actions by the Member; Meetings. The Member may approve a matter or take any action at a meeting or without a meeting by the written consent of the Member. Meetings of the Member may be called at any time by the Member.

2.3 Liability of the Member. All debts, obligations and liabilities of the Company, whether arising in contract, tort or otherwise, shall be solely the debts, obligations and liabilities of the Company, and the Member shall not be obligated personally for any such debt, obligation or liability of the Company solely by reason of being a member.

2.4 Power to Bind the Company. The Member (acting in its capacity as such) shall have the authority to bind the Company to any third party with respect

to any matter.

2.5 Admission of Members. Persons or entities may be admitted as members of the Company only upon the prior written approval of the Member.

ARTICLE 3
Management by the Member

3.1 Management of the Company. The management of the Company is fully reserved to the Member, and the Company shall not have "managers," as that term is used in the Act. The powers of the Company shall be exercised by or under the authority of, and the business and affairs of the Company shall be managed under the direction of, the Member, who shall make all decisions and take all actions for the Company. In managing the business and affairs of the Company and exercising its powers, the Member shall act through resolutions adopted in written consents. Decisions or actions taken by the Member in accordance with this Agreement shall constitute decisions or action by the Company and shall be binding on the Company.

3.2 Officers and Related Persons. The Member shall have the authority to appoint and terminate officers of the Company and retain and terminate employees, agents and consultants of the Company and to delegate such duties to any such officers, employees, agents and consultants as the Member deems appropriate, including the power, acting individually or jointly, to represent and bind the Company in all matters, in accordance with the scope of their respective duties.

ARTICLE 4
Capital Structure and Contributions

4.1 Capital Structure. The capital structure of the Company shall consist of one class of common interests (the "Common Interests"). All Common Interests shall be identical with each other in every respect. The Member shall own all of the Common Interests issued and outstanding.

4.2 Capital Contributions. From time to time, the Member may determine that the Company requires capital and may make capital contribution(s) in an amount determined by the Member. A capital account shall be maintained for the Member, to which contributions and profits shall be credited and against which distributions and losses shall be charged.

ARTICLE 5
Profits, Losses and Distributions

5.1 Profits and Losses. For financial accounting and tax purposes, the Company's net profits or net losses shall be determined on an annual basis in accordance with the manner determined by the Member. In each year, profits and losses shall be allocated entirely to the Member.

5.2 Distributions. The Member shall determine profits available for distribution and the amount, if any, to be distributed to the Member, and shall authorize and distribute on the Common Interests, the determined amount when, as and if declared by the Member. The distributions of the Company shall be allocated entirely to the Member.

ARTICLE 6
Events of Dissolution

The Company shall be dissolved and its affairs wound up upon the occurrence of any of the following events (each, an "Event of Dissolution"):

(a) The Member votes for dissolution; or

(b) A judicial dissolution of the Company under Section 18-802 of the Act.

No other event, including, without limitation, the death, retirement, resignation, expulsion, bankruptcy or dissolution of the Member, shall cause the dissolution of the Company; *provided*, *however*, that in the event of any occurrence resulting in the termination of the continued membership of the last remaining member of the Company, the Company shall be dissolved unless, within ninety (90) days following such event, the personal representative of the last remaining member agrees in writing to continue the Company and to the admission of such personal representative (or any other person or entity designated by such personal representative) as a member of the Company, effective upon the event resulting in the termination of the continued membership of the last remaining member of the Company.

ARTICLE 7
Transfer of Interests in the Company

The Member may sell, assign, transfer, convey, gift, exchange, pledge, hypothecate or otherwise dispose of ("Transfer") any or all of its Common Interests to any person or entity; *provided, however*, that such person or entity to whom such Common Interests are Transferred shall be an assignee and shall have no right to participate in the Company's business and affairs unless and until such person or entity shall be admitted as a member of the Company upon (i) the prior written approval by the Member pursuant to Section 2.5 of this Agreement and (ii) receipt by the Company of a written agreement executed by the person or entity to whom such Common Interests are Transferred agreeing to be bound by the terms of this Agreement.

ARTICLE 8
Exculpation and Indemnification

8.1 Exculpation. Notwithstanding any other provisions of this Agreement, whether express or implied, or any obligation or duty at law or in equity, none of the Member, nor any officers, directors, stockholders, partners, members, managers, employees, affiliates, representatives or agents of the Member, nor any officer, employee, representative or agent of the Company (individually, a "Covered Person" and, collectively, the "Covered Persons") shall be liable to the Company or any other person for any act or omission (in relation to the Company, its property or the conduct of its business or affairs, this Agreement, any related document or any transaction contemplated hereby or thereby) taken or omitted by a Covered Person, from and after the Effective Date, in good faith in the reasonable belief that such act or omission is in or is not contrary to the best interests of the Company and is within the scope of authority granted to such Covered Person by this Agreement, provided such act or omission does not constitute fraud, willful misconduct or gross negligence.

8.2 Indemnification. From and after the Effective Date, to the fullest extent permitted by the Act, the Company shall indemnify and hold harmless each Covered Person from and against any and all losses, claims, demands, liabilities, expenses, judgments, fines, settlements and other amounts arising from any and all claims, demands, actions, suits or proceedings, civil, criminal, administrative or investigative ("Claims"), in which the Covered Person may be involved, or threatened to be involved, as a party or otherwise, by reason of the fact that he, she or it is a Covered Person or which relates to or arises out of the Company or its property, business or affairs, in each case with respect to the time period on and after the Effective Date. A Covered Person shall not be entitled to indemnification under this Section 8.2 with respect to (i) any Claim with respect to which such Covered Person has engaged in fraud, willful misconduct or gross negligence or (ii) any Claim initiated by such Covered Person unless such Claim (A) was brought to enforce such Covered Person's rights to indemnification hereunder or (B) was

authorized or consented to by the Member. Expenses incurred in defending any Claim by (y) the Member or any officer, director, stockholder, partner, member, manager, or affiliate of the Member shall be paid by the Company and (z) any other Covered Person may be paid by the Company, but only upon the prior written approval of the Member in its sole and absolute discretion, upon such terms and conditions, if any, as the Member deems appropriate, in each case, in advance of the final disposition of such Claim upon receipt by the Company of an undertaking by or on behalf of such Covered Person to repay such amount if it shall be ultimately determined that such Covered Person is not entitled to be indemnified by the Company as authorized by this Section 8.2. "Effective Date" shall be as defined in the Plan on the date hereof. "Plan" shall mean the Debtors' Amended Joint Prearranged Chapter 11 Plan pursuant to Chapter 11 of the Bankruptcy Code, filed on September 4, 2015.

8.3 Amendments. Any repeal or modification of this Article 8 by the Member shall not adversely affect any rights of such Covered Person pursuant to this Article 8, including the right to indemnification and to the advancement of expenses of a Covered Person, existing at the time of such repeal or modification with respect to any acts or omissions occurring prior to such repeal or modification.

ARTICLE 9
Miscellaneous

9.1 Tax Treatment. Unless otherwise determined by the Member, the Company shall be a disregarded entity for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes), and the Member and the Company shall timely make any and all necessary elections and filings for the Company to be treated as a disregarded entity for U.S. federal income tax purposes (as well as for any analogous state or local tax purposes).

9.2 Amendments. Amendments to this Agreement and to the Certificate of Formation shall be effective only if approved in writing by the Member. An amendment shall become effective as of the date specified in the approval of the Member or if none is specified as of the date of such approval.

9.3 Severability. If any provision of this Agreement is held to be invalid or unenforceable for any reason, such provision shall be ineffective to the extent of such invalidity or unenforceability; *provided, however*, that the remaining provisions will continue in full force without being impaired or invalidated in any way unless such invalid or unenforceable provision or clause shall be so significant as to materially affect the expectations of the Member regarding this Agreement.

Otherwise, any invalid or unenforceable provision shall be replaced by the Member with a valid provision which most closely approximates the intent and economic effect of the invalid or unenforceable provision.

9.4 Governing Law. This Agreement shall be governed by and construed in accordance with the laws of the State of Delaware without regard to the principles of conflicts of laws thereof.

9.5 Limited Liability Company. The Member intends to form a limited liability company and does not intend to form a partnership under the laws of the State of Delaware or any other laws.

9.6 Indemnity. The Certificate of Formation filed on January 24, 2008 and the Original LLC Agreement did not contain any provisions relating to indemnification, defense, reimbursement, exculpation, and/or limitation of liability of, and advancement of fees and expenses rights.

[*Signature page follows.*]

IN WITNESS WHEREOF, the undersigned has duly executed this Agreement as of the day first above written.

BOOMERANG TUBE, LLC

By: _____
Name: [●]
Title: [●]

EXHIBIT 20

Amended Certificate of Formation of BTCSP, LLC

CERTIFICATE OF AMENDMENT
TO
CERTIFICATE OF FORMATION
OF
BTCSP, LLC

1. The name of the limited liability company is BTCSP, LLC (the "Company").

2. The Certificate of Formation of the Company is hereby amended to include Article Fourth, as follows:

> FOURTH, Pursuant to Section 1123(a)(6) of chapter 11 of title 11 of the Bankruptcy Code, the Company shall not issue any non-voting capital interest of any class, series or other designation; *provided*, *however*, that the provisions of this sentence shall (i) have no further force or effect beyond what is required by Section 1123(a)(6) of the Bankruptcy Code and (ii) only have such force and effect to the extent and for so long as Section 1123(a)(6) of the Bankruptcy Code is in effect and applies to the Company.

IN WITNESS WHEREOF, the undersigned has executed this Certificate of Amendment this [•] day of [•], 2015.

BTCSP, LLC

By: _____
Name: [•]
Title: Authorized Person