

(d) Liens for taxes, assessment, or other governmental charges owing by a Restricted Entity which are not yet due and payable or which are being actively contested in good faith by appropriate proceedings and adequate reserves for such items have been made in accordance with GAAP;

(e) Liens existing on the Closing Date and securing purchase money debt or Capital Lease obligations permitted under Section 6.1(c); provided that each such Lien encumbers only the Property purchased in connection with the creation of any such purchase money debt or the subject of any such Capital Lease, and all proceeds thereof (including insurance proceeds), and the amount secured thereby is not increased;

(f) encumbrances consisting of minor easements, zoning restrictions, or other restrictions on the use of real property that do not (individually or in the aggregate) materially affect the value of the Properties encumbered thereby or materially impair the ability of any Restricted Entity to use such Properties in its business, and none of which is violated in any material aspect by existing or proposed structures or land use;

(g) contractual Liens encumbering the Properties of Knight Resources, LLC, a Louisiana limited liability company, or El Caballero which arise in the ordinary course of business under operating agreements, joint venture agreements, oil and gas partnership agreements, oil and gas leases, farm-out agreements, division orders, contracts for the sale, transportation or exchange of oil and natural gas, unitization and pooling declarations and agreements, area of mutual interest agreements, royalty agreements, overriding royalty agreements, marketing agreements, processing agreements, net profits agreements, development agreements, gas balancing or deferred production agreements, injection, repressuring and recycling agreements, salt water or other disposal agreements, seismic or other geophysical permits or agreements, and other agreements which are usual and customary in the oil and gas business and are for claims which are not delinquent or which are being contested in good faith by appropriate action and for which adequate reserves have been maintained in accordance with GAAP, provided that any such Lien referred to in this clause does not materially impair the use of the Property covered by such Lien for the purposes for which such Property is held by such Restricted Entity or materially impair the value of such Property subject thereto;

(h) Liens arising solely by virtue of any statutory or common law provision relating to banker's liens, rights of set-off or similar rights and remedies and burdening only deposit accounts or other funds maintained by a Restricted Entity with a depository institution and which are within the general parameters customary in the banking industry;

(i) Liens on cash or securities pledged to secure performance of tenders, surety and appeal bonds, government contracts, performance and return of money bonds, bids, trade contracts, leases, statutory obligations, regulatory obligations and other obligations of a like nature incurred by a Restricted Entity in the ordinary course of business;

(j) judgment and attachment Liens that secure judgments or other obligations not in excess of \$100,000, provided that (i) any appropriate legal proceedings which may have been duly initiated for the review of such judgment shall not have been finally terminated or the period within which such proceeding may be initiated shall not have expired and (ii) no action to enforce such Lien has been commenced;

(k) Liens not described above arising prior to the Petition Date and existing on the Closing Date which secure the Debt arising under the Prepetition Credit Agreement, the Permitted Iberia Debt or the Permitted JPMorgan Debt; and

(l) other Liens not described above that are permitted under the Restructuring Support Agreement.

Section 6.3 Investments. No Borrower shall, nor shall it permit any of its Subsidiaries to, make or hold any direct or indirect Investment, other than the following (collectively, the “Permitted Investments”):

(a) Investments by a Restricted Entity in the form of trade credit to customers of such Restricted Entity arising in the ordinary course of business and represented by accounts from such customers;

(b) Investments existing on the Closing Date in Subsidiaries as of the Closing Date; provided that, the respective amounts of such loans, advances, capital contributions, investments, purchases and commitments shall not be increased (other than appreciation); and

(c) Capital Expenditures permitted under Section 6.18.

Section 6.4 Acquisitions. No Borrower shall, nor shall it permit any of its Subsidiaries to, make any Acquisition in a single transaction or related series of transactions.

Section 6.5 Agreements Restricting Liens. No Borrower shall, nor shall it permit any of its Subsidiaries to, create, incur, assume or permit to exist any contract, agreement or understanding (other than (i) this Agreement, (ii) the DIP Order, (iii) the Prepetition Credit Agreement and the loan documents related thereto, (iv) the HMC Leasing/Iberia Loan Documents as in effect on the date hereof, (v) the JPM/Knight Family Loan Documents as in effect on the date hereof, (vi) agreements governing Debt permitted by Section 6.1(c) to the extent such restrictions govern only the Property (and the proceeds thereof) financed pursuant to such Debt, (vii) any prohibition or limitation that exists pursuant to applicable requirements of a Governmental Authority, (viii) any prohibition or limitation that restricts subletting or assignment of leasehold interests contained in any lease governing a leasehold interest of a Borrower or a Subsidiary and customary provisions in other contracts restricting assignment thereof, and (ix) any prohibition or limitation that exists in any contract to which a Restricted Entity is a party on the date hereof so long as (a) such prohibition or limitation is generally applicable and does not specifically address any of the Obligations or the Liens securing the Obligations, and (b) the noncompliance of such prohibition or limitation would not reasonably be expected to be adverse to the Administrative Agent or the Lenders) which in any way prohibits or restricts the granting, conveying, creation or imposition of any Lien on any of its Property, whether now owned or hereafter acquired, to secure the Obligations or restricts any Subsidiary from paying Restricted Payments to its parent company that is a Restricted Entity, or which requires the consent of or notice to other Persons in connection therewith.

Section 6.6 Use of Proceeds. No Borrower shall, nor shall it permit any of its Subsidiaries to, use the proceeds of the Advances in any manner or for any purpose other than as set forth in Section 4.15. No Borrower shall, nor shall it permit any of its Subsidiaries to, use the proceeds of the Advances to fund the allowed fees and expenses of legal counsel and financial advisors to the Debtors and any official committee in excess of \$4,625,000 in the aggregate without the consent of the Majority Lenders. No Credit Party shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, use any part of the proceeds of Advances for any purpose which violates, or is inconsistent with, Regulations T, U, or X. No proceeds of any Advance shall be used in any manner that would, after giving effect to such use, prevent the Borrowers from making the representations and warranties provided in Section 4.19. No Borrower shall, nor shall it permit any of its Subsidiaries to, use, lend, contribute or otherwise make available any part of the proceeds of the Advances, to fund: (i) any activities or business of or with any Person, or in any country or territory, that, at the time of such funding, is, or whose government is, the subject of

Sanctions; (ii) in any other manner that would result in a violation of Sanctions by any Person (including any Person participating in the Loans, whether as underwriter, advisor, investor, or otherwise); or (iii) 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, assuming in all cases that such Act applies to a Restricted Entity. Notwithstanding anything to the contrary, no portion of the Advances or the Collateral (including any cash collateral) shall be used (A) to challenge the validity, perfection, priority, extent or enforceability of the Obligations under the DIP Facility or the obligations under the Prepetition Credit Agreement, (B) to investigate or assert any other claims or causes of action against the Administrative Agent, any Lender or any other agent or holder of any such obligations, except as agreed by the Administrative Agent and the Majority Lenders or (C) for any act which has the effect of materially or adversely modifying or compromising the rights and remedies of the Administrative Agent or the Lenders or any such party with respect to the DIP Facility or any Credit Document (as defined in the Prepetition Credit Agreement).

Section 6.7 Corporate Actions; Accounting Changes.

(a) Except pursuant to an Acceptable Plan of Reorganization, no Borrower shall, nor shall it permit any of its respective Subsidiaries to, merge or consolidate with or into any other Person.

(b) Except pursuant to an Acceptable Plan of Reorganization, no Borrower shall, nor shall it permit any of its Subsidiaries to, (i) change its name, change its state of incorporation, formation or organization, change its organizational identification number or reorganize in another jurisdiction, (ii) create or suffer to exist any Subsidiary not existing on the date of this Agreement, (iii) without prior written notice to, and prior consent of, the Administrative Agent and the Majority Lenders, amend, supplement, modify or restate their articles or certificate of incorporation or formation, limited partnership agreement, bylaws, limited liability company agreements, or other equivalent organizational documents, (v) change its method of accounting employed in the preparation of the financial statements referred to in Section 4.4 or change the fiscal year end of the Borrowers unless required to conform to GAAP or approved in writing by the Majority Lenders, or (vi) without 30 days prior written notice to the Administrative Agent, discontinue or change its address of its place of business, chief executive office, or office where it keeps records concerning accounts, contract rights, and general intangibles.

Section 6.8 Sale of Assets. No Borrower shall, nor shall it permit any of its Subsidiaries to, make a Disposition, other than the following:

(a) any Restricted Entity may sell or lease inventory and rental equipment in the ordinary course of business;

(b) any Restricted Entity may Dispose of equipment that is in need of replacement to third parties if (i) such Restricted Entity receives fair market value for such equipment and (ii) 100% of the consideration received for such equipment is cash; and

(c) any other Disposition approved by the Bankruptcy Court pursuant to an order in form and substance satisfactory to the Majority Lenders.

Section 6.9 Restricted Payments. No Borrower shall make, nor shall it permit any of its Subsidiaries to make any Restricted Payments except that so long as no Default exists or would result from the making of such Restricted Payment, (i) any Credit Party may make Restricted Payments to any other Credit Party and (ii) any Restricted Entity may make Restricted Payments to any Credit Party.

Section 6.10 Affiliate Transactions. No Borrower shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into or permit to exist any transaction or series of transactions (including, but not limited to, the purchase, Disposition, lease or exchange of Property, the making of any investment, the giving of any guaranty, the assumption of any obligation or the rendering of any service) with any of their Affiliates which are not Credit Parties unless such transaction or series of transactions is on terms no less favorable to such Credit Party than those that could be obtained in a comparable arm's length transaction with a Person that is not such an Affiliate except the restrictions in this Section 6.10 shall not apply to: (a) the Restricted Payments permitted under Section 6.9, (b) Investments by a Credit Party in the form of Equity Interests of another Credit Party and (c) reasonable and customary director, officer and employee compensation (including bonuses), indemnification and other benefits (including retirement, health, stock option and other benefit plans). Notwithstanding anything herein to the contrary, no Borrower shall, nor shall it permit any of its Subsidiaries to, directly or indirectly, enter into any transaction or series of transactions (including, but not limited to, the purchase, Disposition, lease or exchange of Property, the making of any investment, the giving of any guaranty, the assumption of any obligation or the rendering of any service) with any of their Affiliates which are not Credit Parties including any transaction that would otherwise be permitted under the above terms of this Section 6.10 unless approved by the Bankruptcy Court pursuant to an order in form and substance satisfactory to the Majority Lenders.

Section 6.11 Line of Business. No Borrower shall, and shall not permit any of its Subsidiaries to, change the character of the Borrowers' and their Subsidiaries' collective business as conducted on the Closing Date, or engage in any type of business not reasonably related to the Borrowers' and their Subsidiaries' collective business as presently and normally conducted.

Section 6.12 Hazardous Materials. No Borrower (a) shall, nor shall it permit any of its Subsidiaries to, create, handle, transport, use, or dispose of any Hazardous Substance or Hazardous Waste, except in the ordinary course of its business and except in compliance with Environmental Law other than to the extent that such non-compliance could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change or in any liability to the Lenders or the Administrative Agent, and (b) shall, nor shall it permit any of its Subsidiaries to, release any Hazardous Substance or Hazardous Waste into the environment and shall not permit any Credit Party's or any Subsidiary's Property to be subjected to any release of Hazardous Substance or Hazardous Waste, except in compliance with Environmental Law other than to the extent that such non-compliance could not, individually or in the aggregate, reasonably be expected to result in a Material Adverse Change or in any liability on the Lenders or the Administrative Agent.

Section 6.13 Compliance with ERISA. Except for matters that individually or in the aggregate could not reasonably be expected to cause a Material Adverse Change, no Borrower shall, nor shall it permit any of its Subsidiaries to, directly or indirectly: (a) engage in any transaction in connection with which any Credit Party or any Subsidiary could be subjected to either a civil penalty assessed pursuant to Section 502(c), (i) or (l) of ERISA or a tax imposed by Chapter 43 of Subtitle D of the Code; (b) terminate, or permit any member of the Controlled Group to terminate, any Plan in a manner, or take any other action with respect to any Plan, which could result in any liability to any Credit Party, any Subsidiary or any member of the Controlled Group to the PBGC; (c) fail to make, or permit any member of the Controlled Group to fail to make, full payment when due of all amounts which, under the provisions of any Plan, agreement relating thereto or applicable Legal Requirement, a Credit Party, a Subsidiary or member of the Controlled Group is required to pay as contributions thereto; (d) permit to exist, or allow any Subsidiary or any member of the Controlled Group to permit to exist, any accumulated funding deficiency (or unpaid minimum required contribution for plan years after December 31, 2007) within the meaning of Section 302 of ERISA or section 412 of the Code, whether or not waived, with respect to any Plan; (e) permit, or allow any member of the Controlled Group to permit, the actuarial

present value of the benefit liabilities (as “actuarial present value of the benefit liabilities” shall have the meaning specified in section 4041 of ERISA) under any Plan that is regulated under Title IV of ERISA to exceed the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Plan allocable to such benefit liabilities; (f) contribute to or assume an obligation to contribute to, or permit any member of the Controlled Group to contribute to or assume an obligation to contribute to, any Multiemployer Plan; (g) acquire, or permit any member of the Controlled Group to acquire, an interest in any Person that causes such Person to become a member of the Controlled Group if such Person sponsors, maintains or contributes to, or at any time in the six-year period preceding such acquisition has sponsored, maintained, or contributed to, (1) any Multiemployer Plan, or (2) any other Plan that is subject to Title IV of ERISA under which the actuarial present value of the benefit liabilities under such Plan exceeds the current value of the assets (computed on a plan termination basis in accordance with Title IV of ERISA) of such Plan allocable to such benefit liabilities; (h) incur, or permit any member of the Controlled Group to incur, a liability to or on account of a Plan under sections 515, 4062, 4063, 4064, 4201 or 4204 of ERISA; or (i) contribute to or assume an obligation to contribute to any employee welfare benefit plan, as defined in section 3(1) of ERISA, including, without limitation, any such plan maintained to provide benefits to former employees of such entities, that may not be terminated by such entities in their sole discretion at any time without any liability.

Section 6.14 Sale and Leaseback Transactions. No Borrower shall, nor shall it permit any of its Subsidiaries to, Dispose to a Person any Property, whether now owned or hereafter acquired, if at the time or thereafter a Credit Party or a Subsidiary shall lease as lessee such Property or any part thereof or other Property which a Credit Party or a Subsidiary intends to use for substantially the same purpose as the Property Disposed of.

Section 6.15 [Reserved].

Section 6.16 [Reserved].

Section 6.17 [Reserved].

Section 6.18 Budgeted Variance and Capital Expenditures.

(a) As of any Testing Date, for the Testing Period prior to the week of such Testing Date, the Borrowers and their Subsidiaries shall not allow (i) the amount of actual receipts for any receipt line item in the DIP Budget during such Testing Period to be less than 85% of the amount of projected receipts for such line item set forth in the DIP Budget during such Testing Period, (ii) the amount of actual operating disbursements for all operating disbursements in the DIP Budget during such Testing Period to be greater than 110% of the amount of all projected operating disbursements in the DIP Budget during such Testing Period (the allowed variances described in the foregoing clauses (i) and (ii), the “Permitted Variances”); provided, that, with respect to clause (ii), (A) there shall be no limit on the variances in the amount of actual and necessary expenditures for the line items that set forth self-insured medical program payments and the Agent Costs (as defined below), which amounts shall be disregarded for purposes of the calculations under clause (ii), and (B) unused capacity for a disbursement line item of the DIP Budget may be carried forward and used in the next four weeks under the same line item for determining such compliance, and (iii) the amount of actual professional fees in the DIP Budget related to the Cases during such Testing Period to exceed the amount of projected professional fees in the DIP Budget related to the Cases during such Testing Period (notwithstanding the Permitted Variances). As used in this Section, “Agent Costs” means all fees, costs and expenses, including attorneys’ fees and expenses, due at any time to the Administrative Agent and the administrative agent under the Prepetition Credit Agreement under the Credit Documents and the Prepetition Credit Agreement, as applicable, that are incurred as a result of the Cases.

(b) The Borrowers and their Subsidiaries shall not make Capital Expenditures from and after the Closing Date without the prior written consent of the Majority Lenders and in any event other than in compliance with the DIP Budget covenant in Section 6.18(a).

Section 6.19 [Reserved].

Section 6.20 [Reserved].

Section 6.21 Operating Leases. No Borrower shall, nor shall it permit any of its Subsidiaries to, become liable directly, indirectly, or contingently in respect of any lease that constitutes an operating lease under GAAP other than operating leases entered into prior to the Petition Date and existing on the Closing Date and which are permitted pursuant to the Restructuring Support Agreement.

Section 6.22 Prepayment of Certain Debt and Other Obligations. No Borrower shall, nor shall it permit any of its Subsidiaries to, prepay, redeem, purchase, defease or otherwise satisfy prior to the scheduled maturity thereof in any manner, or make any payment in violation of the subordination terms of, any Debt, except the prepayment of the Obligations in accordance with the terms of this Agreement or the prepayment of other Debt in accordance with the Restructuring Support Agreement.

Section 6.23 Contracts and Leases. No Borrower shall, nor shall it permit any of its Subsidiaries to, except as otherwise permitted pursuant to the DIP Order, any Acceptable Plan of Reorganization or a motion filed by or after consultation of the Majority Lenders or a motion to assume the Restructuring Support Agreement, assume, assume and assign or reject any executory contract or unexpired lease not assumed, assumed and assigned or rejected on or before the date hereof.

Section 6.24 Additional Bankruptcy Matters. Without the prior written consent of the Majority Lenders, no Borrower shall, nor shall it permit any of its Subsidiaries to, do any of the following:

(a) Certain Payments. Except as expressly provided or permitted hereunder (including, without limitation, to the extent pursuant to any First Day Order or “second day” order complying with the terms of this Agreement) or, with the prior consent of the Majority Lenders, as provided pursuant to any other order of the Bankruptcy Court, make any payment or distribution to any non-Debtor affiliate or corporate insider outside of the ordinary course of business.

(b) Alternative Plan of Reorganization. File or support the confirmation of any Plan of Reorganization or liquidation other than the Acceptable Plan of Reorganization.

(c) Material Contracts. Enter into a material contractual obligation without the consent of the Majority Lenders.

(d) Superpriority Claims. Incur, create, assume, suffer to exist or permit any other superpriority claim that is *pari passu* with or senior to the claims of the Secured Parties against the Debtors except with respect to the Carve-Out.

ARTICLE 7 DEFAULT AND REMEDIES

Section 7.1 Events of Default. The occurrence of any of the following events shall constitute an “Event of Default” under this Agreement and any other Credit Document:

(a) Payment Failure. Any Credit Party fails to pay when due or, following notice to the Credit Parties, within two Business Days thereafter, any principal or interest or any other amount due under this Agreement or any other Credit Document, including payments of fees, reimbursements, and indemnifications;

(b) False Representation or Warranties. Any representation or warranty made or deemed to be made by any Credit Party or any officer thereof in this Agreement, in any other Credit Document or in any certificate delivered in connection with this Agreement or any other Credit Document is incorrect, false or otherwise misleading 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) at the time it was made or deemed made;

(c) Breach of Covenant. (i) Any breach by any Credit Party of any of the covenants in Sections 5.1 (as to its existence), 5.2 (and such breach shall remain unremedied for a period of two Business Days after notice thereof to the Credit Parties), 5.3, 5.7, 5.15, 5.17, 5.18 or Article 6 of this Agreement or the corresponding covenants in any Guaranty or (ii) any breach by any Credit Party of any other covenant contained in this Agreement or any other Credit Document and such breach shall remain unremedied for a period of 10 days following the earlier of (A) the date on which Administrative Agent gives notice of such failure to any Borrower and (B) the date any officer of any Borrower or any Subsidiary acquires knowledge of such failure (such grace period to be applicable only in the event such Default can be remedied by corrective action of any Borrower or any Subsidiary);

(d) Guaranties. Any provision in any Guaranty shall at any time (before its expiration according to its terms) and for any reason cease to be in full force and effect and valid and binding on the Guarantors party thereto or shall be contested by any party thereto; any Guarantor shall deny it has any liability or obligation under such Guaranty; or any Guarantor shall cease to exist other than as expressly permitted by the terms of this Agreement;

(e) Lack of Security Interest. Any lien created under the Interim DIP Order or the Final DIP Order, as applicable, shall cease to be, or shall be asserted by any Debtor not to be, a valid and perfected Lien, with the priority required by the Interim DIP Order or the Final DIP Order, as the case may be, except as a result of a disposition of the applicable Collateral in a transaction permitted under this Agreement;

(f) Cross-Default. (i) Any Restricted Entity shall fail to pay any principal of or premium or interest on its Debt which is outstanding in a principal amount of at least \$200,000 individually or when aggregated with all such Debt of the Restricted Entities so in default (other than the Obligations) when the same becomes due and payable (whether by scheduled maturity, required prepayment, acceleration, demand or otherwise), and such failure shall continue after the applicable grace period, if any, specified in the agreement or instrument relating to such Debt; (ii) any other event shall occur or condition shall exist under any agreement or instrument relating to Debt which is outstanding in a principal amount of at least \$200,000 individually or when aggregated with all such Debt of the Restricted Entities so in default (other than the Obligations), and shall continue after the applicable grace period, if any, specified in such agreement or instrument, if the effect of such event or condition is to accelerate, or to permit the acceleration of, the maturity of such Debt prior to the stated maturity thereof; or (iii) any such Debt shall be declared to be due and payable, or required to be prepaid (other than by a regularly scheduled required prepayment); provided that, for purposes of this paragraph (f), the “principal amount” of the obligations in respect of Hedging Arrangements at any time shall be Swap Termination Value that would be required to be paid by a Restricted Entity if such Hedging Arrangements were terminated at such time;

(g) [Reserved];

(h) Settlements; Adverse Judgment. Any Restricted Entity enters into a settlement of any claim against any of them when a suit has been filed or suffers final judgments against any of them since the date of this Agreement in an aggregate amount, less any insurance proceeds covering such settlements or judgments which are received or as to which the insurance carriers admit liability, greater than \$200,000;

(i) Termination Events. Any Termination Event with respect to a Plan shall have occurred, and, 30 days after notice thereof shall have been given to any Credit Party by the Administrative Agent, such Termination Event shall not have been corrected and shall have created and caused to be continuing a material risk of Plan termination or liability for withdrawal from the Plan as a “substantial employer” (as defined in Section 4001(a)(2) of ERISA), which termination could reasonably be expected to result in a liability of, or liability for withdrawal could reasonably be expected to be, greater than \$200,000;

(j) Plan Withdrawals. Any Credit Party or any member of the Controlled Group as employer under a Multiemployer Plan shall have made a complete or partial withdrawal from such Multiemployer Plan and such withdrawing employer shall have incurred a withdrawal liability in an annual amount exceeding \$200,000;

(k) Credit Documents. Any material provision of any Credit Document shall for any reason cease to be valid and binding on any Credit Party or any such Person shall so state in writing;

(l) Change in Control. The occurrence of a Change in Control;

(m) Material Adverse Change. The occurrence of a Material Adverse Change;

(n) Casualty. Loss, theft, substantial damage or destruction of a material portion of the Collateral shall have occurred and such loss, theft, substantial damage or destruction is not fully covered by insurance (except for deductibles and allowing for the depreciated value of such Collateral);

(o) [Reserved];

(p) Dismissal of Cases; Appointment of Trustee. (i) Any of the Cases shall be dismissed or converted to a case under Chapter 7 of the Bankruptcy Code or any Debtor shall file a motion or other pleading seeking the dismissal of any of the Cases under Section 1112 of the Bankruptcy Code or otherwise; (ii) a trustee under Chapter 7 or Chapter 11 of the Bankruptcy Code, an examiner with enlarged powers relating to the operation of the business (powers beyond those set forth in Section 1106(a)(3) and (4) of the Bankruptcy Code) under Section 1106(b) of the Bankruptcy Code shall be appointed in any of the Cases; or (iii) any order by the Bankruptcy Court shall be entered terminating or modifying the exclusivity right of any Debtor to file a Chapter 11 plan pursuant to section 1121 of the Bankruptcy Code, without prior written consent of the Majority Lenders;

(q) Superpriority Claims. An order of the Bankruptcy Court shall be entered granting any superpriority claim (other than the Carve-Out) in any of the Cases, which is pari passu with or senior to the claims of the Administrative Agent and the Lenders against any Debtor hereunder or any Lien or security interest that is pari passu with or senior to the Liens and security interest securing the Obligations, or any Debtor takes any action seeking or supporting the grant of any such claim, Lien or security interest, in each case except as expressly permitted hereunder;

(r) Final DIP Order. The Final DIP Order shall not have been entered by the Bankruptcy Court on or before September 1, 2017;

(s) Challenge to Order. The Interim DIP Order or the Final DIP Order, as applicable, shall fail to be in full force and effect, including by the entry of an order (i) reversing or vacating the Interim DIP Order or the Final DIP Order, (ii) amending or modifying the Interim DIP Order or the Final DIP Order in a manner that is adverse to the Administrative Agent and the Lenders without the consent of the Majority Lenders or (iii) staying for a period in excess of seven days the Interim DIP Order or the Final DIP Order (as applicable);

(t) Relief from the Automatic Stay. The Bankruptcy Court shall enter an order or orders granting relief from the automatic stay applicable under Section 362 of the Bankruptcy Code to allow any one or more creditors to execute upon or enforce Liens on or security interests in any Properties of any of the Debtors which have a fair market value in excess of \$25,000 in the aggregate or permit other actions that could reasonably be expected to result in a Material Adverse Change;

(u) Compliance with DIP Order. (i) The Debtors shall fail to comply, in any material respect, with the terms of the DIP Order, or (ii) the occurrence of an "Event of Default" as defined in the DIP Order;

(v) Prepetition Payments. The Debtors shall make any Prepetition Payments other than (i) as permitted by the DIP Order, (ii) as otherwise permitted by this Agreement, (iii) as otherwise ordered by the Bankruptcy Court and agreed in writing by Administrative Agent with the consent of the Majority Lenders, or (iv) as authorized by the Bankruptcy Court (A) in accordance with the First Day Orders or any other orders of the Bankruptcy Court entered with the consent of, or without any objection by, the Majority Lenders, (B) in connection with the assumption of executory contracts and unexpired leases with the consent of, or without any objection by, the Majority Lenders, (C) in respect of accrued payroll and related expenses and employee benefits as of the Petition Date, or (D) in respect of other Prepetition Payments not to exceed \$5,000 individually or \$10,000 in the aggregate, in each case to the extent such payments are otherwise in compliance with the DIP Budget;

(w) [Reserved];

(x) [Reserved];

(y) Plan of Reorganization. If a Plan of Reorganization that is not an Acceptable Plan of Reorganization shall be filed by a Debtor in the Cases, or the Debtors shall propose or support, or fail to oppose, any such plan or motion filed by a person, other than a Debtor;

(z) Restructuring Support Agreement. The Restructuring Support Agreement shall cease to be in full force and effect; or

(aa) Actions in Support of Breach. Any Debtor shall file any application or pleading with the Bankruptcy Court or otherwise consents to any matters set forth above that would constitute an Event of Default (unless the Majority Lenders consent to such filing or consent).

Section 7.2 Optional Acceleration of Maturity. If any Event of Default shall have occurred and be continuing, then, and in any such event, the Administrative Agent shall (subject to the terms hereof) at the direction of the Majority Lenders, take any or all of the following actions:

(a) by notice to any Borrower, declare that the Commitments and obligation of each Lender to make Advances shall be terminated, whereupon the same shall forthwith terminate;

(b) by notice to any Borrower, declare the Obligations, all interest thereon and all other amounts payable under this Agreement and the other Credit Documents to be forthwith due and payable, whereupon the Obligations, all such interest, and all such amounts shall become and be forthwith due and payable in full, without presentment, demand, protest or further notice of any kind (including, without limitation, any notice of intent to accelerate or notice of acceleration), all of which are hereby expressly waived by each of the Credit Parties,

(c) terminate any Debtor's ability to use the cash collateral provided for by the Interim DIP Order or the Final DIP Order (provided that the Debtors shall, so long as no funds are otherwise available, at all times be permitted to pay professional fees out of amounts on deposit in the Professional Fee Escrow in accordance with the Interim DIP Order and the Final DIP Order, as applicable); and/or,

(d) exercise on behalf of itself and the Secured Parties all rights and remedies available to it and the Secured Parties under the Credit Documents, the Interim DIP Order, and upon entry of the Final DIP Order, the Final DIP Order, or applicable law, in each case, without further order of or application or motion to the Bankruptcy Court, and without restriction or restraint by any stay under Sections 362 or 105 of the Bankruptcy Code.

The Debtors shall not seek to enjoin, hinder, delay, or object to the Administrative Agent's exercise of rights and remedies in accordance with this Agreement, and at any proceeding with respect to the Administrative Agent's exercise of rights and remedies, the Debtors cannot raise any substantive objections, other than to challenge the occurrence of the relevant Event of Default.

Section 7.3 [Reserved].

Section 7.4 Set-off. If an Event of Default shall have occurred and be continuing, the Administrative Agent, each Lender, and each of their respective Affiliates is hereby authorized at any time and from time to time, to the fullest extent permitted by applicable Legal Requirement, to set off and apply any and all deposits (general or special, time or demand, provisional or final, in whatever currency) at any time held and other obligations (in whatever currency) at any time owing by the Administrative Agent, such Lender or any such Affiliate to or for the credit or the account of any Credit Party against any and all of the obligations of such Credit Party now or hereafter existing under this Agreement or any other Credit Document to the Administrative Agent or such Lender, irrespective of whether or not the Administrative Agent or such Lender shall have made any demand under this Agreement or any other Credit Document and although such obligations of any Credit Party may be contingent or unmatured or are owed to a branch or office of the Administrative Agent or such Lender different from the branch or office holding such deposit or obligated on such indebtedness; 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 Section 2.14 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. The rights of each Lender Party and its Affiliates under this Section 7.4 are in addition to other rights and remedies (including other rights of setoff) that such Lender or Affiliates may have. Each Lender Party agrees to notify the Borrower Representative and the Administrative Agent promptly after any such setoff and application, provided that the failure to give such notice shall not affect the validity of such setoff and application. The rights of the Administrative Agent, each Lender and their respective Affiliates under this Section 7.4 are in addition to other rights and remedies (including other rights of setoff) that the Administrative Agent, such Lender or their respective Affiliates may have.

Section 7.5 Remedies Cumulative, No Waiver. No right, power, or remedy conferred to any Lender in this Agreement or the other Credit Documents, or now or hereafter existing at law, in equity, by statute, or otherwise shall be exclusive, and each such right, power, or remedy shall to the full extent permitted by law be cumulative and in addition to every other such right, power or remedy. No course of dealing and no delay in exercising any right, power, or remedy conferred to any Lender in this Agreement and the other Credit Documents or now or hereafter existing at law, in equity, by statute, or otherwise shall operate as a waiver of or otherwise prejudice any such right, power, or remedy. Any Lender may cure any Event of Default without waiving the Event of Default. No notice to or demand upon any Borrower or any other Credit Party shall entitle such Borrower or any other Credit Party to similar notices or demands in the future.

Section 7.6 Application of Payments. Prior to an Event of Default, all payments made hereunder shall be applied by the Administrative Agent as directed by the Borrower Representative, but subject to the terms of this Agreement, including the application of prepayments according to Section 2.11. During the existence of an Event of Default, all payments and collections received by the Administrative Agent shall be applied in accordance with Section 2.11 and to the Obligations in such manner as determined by the Administrative Agent, or at the direction of the Majority Lenders, in the following order:

FIRST, to the payment of all costs and expenses incurred by the Administrative Agent (in its capacity as such hereunder or under any other Credit Document) in connection with this Agreement or any of the Obligations, including all court costs and the fees and expenses of its agents and legal counsel, the repayment of all advances made by the Administrative Agent as secured party hereunder or under any other Credit Document on behalf of any Credit Party and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Credit Document;

SECOND, to the payment of all costs and expenses incurred by the Lenders pro rata in connection with this Agreement or any of the Obligations, including all court costs and the fees and expenses of their respective agents and legal counsel, and any other costs or expenses incurred in connection with the exercise of any right or remedy hereunder or under any other Credit Document;

THIRD, to the payment of all accrued interest and fees constituting part of the Obligations (the amounts so applied to be distributed ratably among the Secured Parties in accordance with the amounts of the Obligations owed to them on the date of any such distribution);

FOURTH, to the payment of any then due and owing principal constituting part of the Obligations (the amounts so applied to be distributed ratably among the Secured Parties in accordance with the principal amounts of the Obligations owed to them on the date of any such distribution);

FIFTH, to the payment of any then due and owing other amounts (including expenses) constituting part of the Obligations, the amounts so applied to be distributed ratably among the Secured Parties in accordance with such amounts owed to them on the date of any such distribution; and

SIXTH, to the Credit Parties, their successors or assigns, or as a court of competent jurisdiction may otherwise direct.

ARTICLE 8
THE ADMINISTRATIVE AGENT

Section 8.1 Appointment and Authority. Each Lender hereby irrevocably (a) appoints Cantor Fitzgerald Securities to act on its behalf as the Administrative Agent hereunder and under the other Credit Documents and (b) 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 or as may be directed by the Majority Lenders. The provisions of this Article 8 are solely for the benefit of the Lender Parties, and no Borrower or any Affiliate thereof 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 Credit Document (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 Legal Requirement. 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.

Section 8.2 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, act as the financial advisor or in any other advisory capacity for and generally engage in any kind of business with any 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. Cantor Fitzgerald Securities (and any successor acting as Administrative Agent) and its Affiliates may accept fees and other consideration from any Borrower or any Affiliate of any Borrower for services in connection with this Agreement or otherwise without having to account for the same to the Lenders.

Section 8.3 Exculpatory Provisions. The Administrative Agent (which term as used in this Section 8.3 shall include its Related Parties) shall not have any duties or obligations except those expressly set forth herein and in the other Credit Documents, and its duties hereunder shall be administrative in nature. Without limiting the generality of the foregoing, the Administrative Agent:

(a) shall not be subject to any fiduciary or other implied duties, regardless of whether a Default or Event of Default has occurred and is continuing;

(b) shall not have any duty to take any discretionary action or exercise any discretionary powers, except discretionary rights and powers expressly contemplated hereby or by the other Credit Documents that the Administrative Agent is required to exercise as directed in writing by the Majority Lenders (or such other number or percentage of the Lenders as shall be expressly provided for herein or in the other Credit 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 Credit Document or applicable Legal Requirement, 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

(c) shall not, except as expressly set forth herein and in the other Credit Documents, have any duty to disclose, nor shall it be liable for the failure to disclose, any information relating to any

Borrower, any other Credit Party or any of their respective 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 Majority 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 Sections 9.3 and 7.1), which may (in the Administrative Agent's sole discretion) be delivered by electronic transmission from such Lenders or counsel to the Majority Lenders, and shall be accompanied by indemnity satisfactory to the Administrative Agent against loss, liability or expense or (ii) in the absence of its own gross negligence or willful misconduct as determined by a court of competent jurisdiction by final and nonappealable judgment. The Administrative Agent shall be deemed not to have knowledge of any Default or Event of Default unless and until notice describing such Default or Event of Default is given to the Administrative Agent in writing by the Borrower Representative or a Lender. In the event that the Administrative Agent receives such a notice of the occurrence of a Default or Event of Default, the Administrative Agent shall (subject to Section 9.3) take such action with respect to such Default or Event of Default as shall reasonably be directed by the Majority Lenders, provided that, unless and until the Administrative Agent shall have received such directions, the Administrative 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 in the best interest of the Lender Parties.

The Administrative Agent shall not be responsible for or have any duty to ascertain or inquire into (i) any recital, statement, warranty or representation (whether written or oral) made in or in connection with this Agreement or any other Credit 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 value, validity, enforceability, effectiveness, enforceability, sufficiency or genuineness of this Agreement, any other Credit Document or any other agreement, instrument or document or the creation, perfection or priority of any Lien purported to be created by the Loan Documents, (v) the inspection of, or to inspect, the Property (including the books and records) of any Credit Party or any Subsidiary or Affiliate thereof, (vi) the satisfaction of any condition set forth in Article 3 or elsewhere herein, other than to confirm receipt of items expressly required to be delivered to the Administrative Agent, or (vii) any litigation or collection proceedings (or to initiate or conduct any such litigation or proceedings) under any Credit Document unless requested by the Majority Lenders in writing and its receives indemnification satisfactory to it from the Lenders. The Administrative Agent shall not be responsible or liable for special, indirect, punitive or consequential loss or damage of any kind whatsoever (including, but not limited to, loss of profit) irrespective of whether the Administrative Agent has been advised of the likelihood of such loss or damage and regardless of the form of action. In no event shall the Administrative Agent be responsible or liable for any failure or delay in the performance of its obligations hereunder arising out of or caused by, directly or indirectly, forces beyond its control, including without limitation, strikes, work stoppages, accidents, acts of war or terrorism, civil or military disturbances, nuclear or natural catastrophes or acts of God, future changes in applicable law or regulation, and interruptions, loss or malfunctions of utilities, communications or computer (software and hardware) services; *it being understood* that the Administrative Agent shall use reasonable efforts consistent with accepted practices in the banking industry to resume performance as soon as practicable under the circumstances.

Section 8.4 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, writing or other communication (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 an Advance 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 Advance. The Administrative Agent may consult with legal counsel (who may be counsel for the Borrowers), independent accountants and other experts selected by it, and shall not be liable for any action taken or not taken by it in accordance with the advice of any such counsel, accountants or experts.

Section 8.5 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 Credit Document by or through any one or more sub-agents appointed by the Administrative Agent. The Administrative Agent and any such sub-agent may perform any and all of its duties and exercise its rights and powers by or through their respective Related Parties. The exculpatory provisions of this Article 8 shall apply to any such sub-agent and to the Related Parties of the Administrative Agent, if any, and of 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.

Section 8.6 Resignation of Administrative Agent.

(a) The Administrative Agent may at any time give notice of its resignation to the other Lender Parties and the Borrower Representative. Upon receipt of any such notice of resignation, the Majority Lenders shall have the right to appoint a successor Administrative Agent. If no such successor Administrative Agent shall have been so appointed 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 applicable Majority Lenders) (the "Resignation Effective Date"), then the retiring Administrative Agent may on behalf of the Lenders, appoint a successor agent. Whether or not a successor has been appointed, such resignation by the Administrative Agent 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 (d) of the definition thereof, the Majority Lenders may, to the extent permitted by applicable Legal Requirement, by notice in writing such Person remove such Person as Administrative Agent and appoint a successor. If no such successor shall have been so appointed by Majority Lenders and shall have accepted such appointment within 30 days (or such earlier day as shall be agreed by the applicable Majority 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) (i) the retiring or removed Administrative Agent shall be discharged from its duties and obligations as Administrative Agent hereunder and under the other Credit Documents (except that in the case of any collateral security held by the Administrative Agent on behalf of the Lenders under any of the Credit Documents, the retiring Administrative Agent shall continue to hold such collateral security until such time as a successor Administrative Agent is appointed) and (ii) all payments, communications and determinations provided to be made by, to or through the retiring or removed Administrative Agent shall instead be made by or to the Lenders, until such time as the Majority Lenders appoint a successor Administrative Agent as provided for above in this paragraph. 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 and the retiring or removed Administrative Agent shall be discharged from all of its duties and obligations hereunder or under the other Credit Documents. After the retiring or removed Administrative Agent's resignation or removal hereunder and under the other Credit Documents, the provisions of this Article 8 and Sections 9.2(a) and (b) and Section 8.9 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.

Section 8.7 Non-Reliance on Administrative Agent and Other Lenders. Each Lender Party acknowledges and agrees that it has, independently and without reliance upon the Administrative Agent or any other Lender Party 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 Party also acknowledges and agrees that it will, independently and without reliance upon the Administrative Agent or any other Lender Party 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 Credit Document or any related agreement or any document furnished hereunder or thereunder. Except for notices, reports, and other documents and information expressly required to be furnished to the Lenders by the Administrative Agent hereunder and for other information in the Administrative Agent's possession which has been requested by a Lender and for which such Lender pays the Administrative Agent's expenses in connection therewith, the Administrative Agent shall not have any duty or responsibility to provide any Lender with any credit or other information concerning the affairs, financial condition, or business of any Credit Party or any of its Subsidiaries or Affiliates that may come into the possession of the Administrative Agent or any of its Affiliates.

Section 8.8 [Reserved].

Section 8.9 Indemnification.

(a) INDEMNITY OF ADMINISTRATIVE AGENT. THE LENDERS SEVERALLY AGREE TO INDEMNIFY THE ADMINISTRATIVE AGENT AND EACH AFFILIATE THEREOF AND THEIR RESPECTIVE DIRECTORS, OFFICERS, EMPLOYEES, AND AGENTS (IN EACH CASE, TO THE EXTENT NOT REIMBURSED BY THE BORROWERS), RATABLY ACCORDING TO THE RESPECTIVE PRINCIPAL AMOUNTS OF THE ADVANCES THEN HELD BY EACH OF THEM (OR IF NO PRINCIPAL OF THE ADVANCES IS AT THE TIME OUTSTANDING, RATABLY ACCORDING TO THE RESPECTIVE COMMITMENTS HELD BY EACH OF THEM IMMEDIATELY PRIOR TO THE TERMINATION, EXPIRATION OR FULL REDUCTION OF EACH SUCH COMMITMENT), FROM AND AGAINST ANY AND ALL LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES, OR DISBURSEMENTS OF ANY KIND OR NATURE WHATSOEVER WHICH MAY BE IMPOSED ON, INCURRED BY, OR ASSERTED AGAINST THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES IN ANY WAY RELATING TO OR ARISING OUT OF THIS AGREEMENT OR ANY ACTION TAKEN OR OMITTED BY THE ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES UNDER THIS AGREEMENT OR ANY OTHER CREDIT DOCUMENT **(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 ADMINISTRATIVE AGENT OR ANY OF ITS RELATED PARTIES)**, AND INCLUDING, WITHOUT LIMITATION, ENVIRONMENTAL LIABILITIES, PROVIDED THAT NO LENDER SHALL BE LIABLE FOR ANY PORTION OF SUCH LIABILITIES, OBLIGATIONS, LOSSES, DAMAGES, PENALTIES, ACTIONS, JUDGMENTS, SUITS, COSTS, EXPENSES, OR

DISBURSEMENTS RESULTING FROM THE ADMINISTRATIVE AGENT'S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. WITHOUT LIMITATION OF THE FOREGOING, EACH LENDER AGREES TO REIMBURSE THE ADMINISTRATIVE AGENT PROMPTLY UPON DEMAND FOR ITS RATABLE SHARE (DETERMINED AS SET FORTH ABOVE IN THIS PARAGRAPH) OF ANY OUT-OF-POCKET EXPENSES (INCLUDING COUNSEL FEES) INCURRED BY THE ADMINISTRATIVE 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 CREDIT DOCUMENT, TO THE EXTENT THAT THE ADMINISTRATIVE AGENT IS NOT REIMBURSED FOR SUCH BY THE BORROWERS. THE OBLIGATIONS UNDER THIS SECTION 8.9(A) SHALL SURVIVE THE PAYMENT IN FULL OF ALL OBLIGATIONS AND THE TERMINATION OF THIS AGREEMENT OR THE EARLIER RESIGNATION OR REMOVAL OF THE ADMINISTRATIVE AGENT.

(b) [Reserved].

Section 8.10 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 Restricted Entity, the Administrative Agent (irrespective of whether the principal of any Advance shall then be due and payable as herein expressed or by declaration or otherwise and irrespective of whether the Administrative Agent shall have made any demand on the Borrowers) shall be entitled and empowered (but not obligated) by intervention in such proceeding or otherwise:

(a) to file and prove a claim for the whole amount of the principal and interest owing and unpaid in respect of the Advances and all other Obligations that are owing and unpaid and to file such other documents as may be necessary or advisable in order to have the claims of the Lenders 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) allowed in such judicial proceeding; and

(b) to collect and receive any monies or other property payable or deliverable on any such claims and to distribute the same; and any custodian, receiver, 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 Section 2.6.

Section 8.11 Collateral and Guaranty Matters.

(a) The Administrative Agent is authorized on behalf of the Secured Parties, without the necessity of any notice to or further consent from such Secured Parties, from time to time, to take any actions with respect to any Collateral which may be necessary to perfect and maintain the Liens upon the Collateral. The Administrative Agent is further authorized (but not obligated) on behalf of the Secured Parties, without the necessity of any notice to or further consent from the Secured Parties, from time to time, to take any action in exigent circumstances as may be reasonably necessary to preserve any rights or privileges of the Secured Parties under the Credit Documents or applicable Legal Requirements. By accepting the benefit of the Liens granted to the Administrative Agent as security for the Obligations, each Secured Party hereby agrees to the terms of this paragraph (a). The Administrative Agent shall have no obligation whatsoever to any Lender or to any other Person to assure that the Collateral exists or is

owned by any Credit Party or is cared for, protected or insured or has been encumbered or that the Liens granted to the Administrative Agent herein or pursuant to the Loan Documents have been properly or sufficiently or lawfully created, perfected, protected or enforced or are entitled to any particular priority, or to exercise at all or in any particular manner or under any duty of care, disclosure or fidelity, or to continue exercising, any of its rights, authorities and powers granted or available to the Administrative Agent pursuant to this Section 8.11 or in any of the Loan Documents; *it being understood* and agreed that in respect of the Collateral, or any act, omission or event related thereto, the Administrative Agent may act in any manner it may deem appropriate, in its reasonable discretion, but consistent with the provisions of this Agreement and the other Loan Documents, including given the Administrative Agent's own interest in the Collateral as a Lender, if any, and that the Administrative Agent shall have no duty or liability whatsoever to any Lender.

(b) The Lenders hereby, and any other Secured Party by accepting the benefit of the Liens securing the Obligations, irrevocably authorize the Administrative Agent to (i) release any Lien granted to or held by the Administrative Agent upon any Collateral (A) upon termination of this Agreement and the payment in full of all outstanding Advances and all other Obligations payable under this Agreement and under any other Credit Document; (B) constituting Property sold or to be sold or disposed of as part of or in connection with any Disposition permitted under this Agreement or any other Credit Document; (C) constituting Property in which no Credit Party owned an interest at the time the Lien was granted or at any time thereafter; or (D) constituting Property leased to any Credit Party under a lease which has expired or has been terminated in a transaction permitted under this Agreement or is about to expire and which has not been, and is not intended by such Credit Party to be, renewed or extended; and (ii) release a Guarantor from its obligations under a Guaranty and any other applicable Credit Document if such Person ceases to be a Subsidiary as a result of a transaction permitted under this Agreement. Upon the request of the Administrative Agent at any time, the Secured Parties will confirm in writing the Administrative Agent's authority to release particular types or items of Collateral pursuant to this Section 8.11.

(c) Notwithstanding anything contained in any of the Credit Documents to the contrary, the Credit Parties, the Administrative Agent, and each Secured Party hereby agree that no Secured Party other than the Administrative Agent shall have any right individually to realize upon any of the Collateral or to enforce the Guaranties, it being understood and agreed that all powers, rights and remedies hereunder and under the other Credit Documents may be exercised solely by Administrative Agent on behalf of the Secured Parties in accordance with the terms hereof and the other Credit Documents. By accepting the benefit of the Liens granted to secure the Obligations, each Secured Party not party hereto hereby agrees to the terms of this paragraph (c).

Section 8.12 Credit Bidding. The Administrative Agent or, subject to the limitations below, any Lender may purchase, in any public or private sale conducted under the provisions of the Uniform Commercial Code (including pursuant to sections 9-610 and 9-620 of the Uniform Commercial Code), the provisions of the Bankruptcy Code (including pursuant to sections 363, 1123, or 1129 of the Bankruptcy Code), or at any sale or foreclosure conducted by the Administrative Agent (whether by judicial action or otherwise) in accordance with applicable law, all or any portion of the Collateral. The Lenders hereby irrevocably authorize the Administrative Agent, upon the written consent of the Majority Lenders, to Credit Bid (in an amount and on such terms as may be directed by the Majority Lenders) and purchase at any such sale (either directly or through one or more acquisition vehicles) all or any portion of the Collateral on behalf of and for the benefit of the Lenders. Each Lender hereby agrees that, except as otherwise provided in the Credit Documents or with the written consent of the Administrative Agent and the Majority Lenders, it will not exercise any right that it might otherwise have to Credit Bid at any sales of all or any portion of the Collateral conducted under the provisions of the Uniform Commercial Code or the Bankruptcy Code, foreclosure sales or other similar Dispositions of Collateral.

**ARTICLE 9
MISCELLANEOUS**

Section 9.1 Costs and Expenses. The Borrowers agree to pay on demand all out-of-pocket costs and expenses of Administrative Agent and the Lenders (including outside counsel fees, charges and disbursements and costs of financial advisors) in connection with (a) the preparation, execution, delivery, administration, modification, and amendment of this Agreement, the Notes, and the other Credit Documents (b) the enforcement (whether through negotiations, legal proceedings, or otherwise) of this Agreement, the Notes, and the other Credit Documents.

Section 9.2 Indemnification; Waiver of Damages.

(a) INDEMNIFICATION. EACH CREDIT PARTY HERETO AGREES TO, JOINTLY AND SEVERALLY, INDEMNIFY AND HOLD HARMLESS THE ADMINISTRATIVE AGENT AND EACH LENDER AND EACH OF THEIR AFFILIATES AND THEIR RESPECTIVE OFFICERS, DIRECTORS, EMPLOYEES, AGENTS, PARTNERS, REPRESENTATIVES AND ADVISORS (EACH, AN “INDEMNITEE”) FROM AND AGAINST ANY AND ALL ACTIONS, SUITS, CLAIMS, DAMAGES, LOSSES, LIABILITIES, COSTS, AND EXPENSES OF ANY KIND OR NATURE (INCLUDING, WITHOUT LIMITATION, REASONABLE ATTORNEYS’ FEES) THAT MAY BE INCURRED BY OR ASSERTED OR AWARDED AGAINST ANY INDEMNITEE, IN EACH CASE ARISING OUT OF OR IN CONNECTION WITH OR BY REASON OF (INCLUDING, WITHOUT LIMITATION, IN CONNECTION WITH ANY INVESTIGATION, LITIGATION, OR PROCEEDING OR PREPARATION OF DEFENSE IN CONNECTION THEREWITH) THE CREDIT DOCUMENTS, ANY OF THE TRANSACTIONS CONTEMPLATED HEREIN OR THE ACTUAL OR PROPOSED USE OF THE PROCEEDS OF THE ADVANCES, **IN ALL CASES, WHETHER OR NOT CAUSED BY OR ARISING, IN WHOLE OR IN PART, OUT OF THE COMPARATIVE, CONTRIBUTORY OR SOLE, ACTIVE OR PASSIVE, IMPUTED, JOINT OR TECHNICAL NEGLIGENCE OF THE APPLICABLE INDEMNITEE,** EXCEPT TO THE EXTENT SUCH CLAIM, DAMAGE, LOSS, LIABILITY, COST, OR EXPENSE IS FOUND IN A FINAL, NON-APPEALABLE JUDGMENT BY A COURT OF COMPETENT JURISDICTION TO HAVE RESULTED FROM SUCH INDEMNITEE’S GROSS NEGLIGENCE OR WILLFUL MISCONDUCT. IN THE CASE OF AN INVESTIGATION, LITIGATION OR OTHER PROCEEDING TO WHICH THE INDEMNITY IN THIS SECTION 9.2 APPLIES, SUCH INDEMNITY SHALL BE EFFECTIVE WHETHER OR NOT SUCH INVESTIGATION, LITIGATION OR PROCEEDING IS BROUGHT BY ANY CREDIT PARTY, ITS DIRECTORS, SHAREHOLDERS OR CREDITORS OR AN INDEMNITEE OR ANY OTHER PERSON OR ANY INDEMNITEE IS OTHERWISE A PARTY THERETO. No Affiliate, equityholder or creditor of any Credit Party (other than a Credit Party) is intended to be, and none of such Persons or entities shall be, third party beneficiaries of this Agreement or the other Credit Documents, and therefore no Indemnatee will have any liability (whether direct or indirect, in contract or tort, or otherwise) to any such respective Affiliate that is not a party hereto or to their respective equityholders or creditors arising out of, related to or in connection with this Agreement, any other Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance or the use of the proceeds thereof. No Credit Party shall, without the prior written consent of each Indemnatee affected thereby (which consent will not be unreasonably withheld), settle any threatened or pending claim or action that would give rise to the right of any Indemnatee to claim indemnification hereunder unless such settlement (x) includes a full and unconditional release of all liabilities arising out of such claim or action against such Indemnatee and (y) does not include any statement as to or an admission of fault, culpability or failure to act by or on behalf of any Indemnatee.

(b) Waiver of Consequential Damages, Etc. To the fullest extent permitted by applicable Legal Requirement, no Credit Party shall assert, agrees not to assert, and hereby waives, 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 Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance or the use of the proceeds thereof. To the fullest extent permitted by applicable Legal Requirement, no Lender Party shall assert, agrees not to assert, and hereby waives, any claim against any Credit Party 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 Credit Document or any agreement or instrument contemplated hereby, the transactions contemplated hereby or thereby, any Advance or the use of the proceeds thereof; provided that nothing contained in this sentence shall limit any Credit Party's indemnification obligations to the extent set forth in Section 9.2(a) above to the extent such special, indirect, consequential or punitive damages are included in any third party claim in connection with which such Indemnitee is otherwise entitled to indemnification hereunder. No Indemnitee referred to in subsection (a) above shall be liable for any damages arising from the use by unintended recipients of any information or other materials distributed to such unintended recipients by such Indemnitee through telecommunications, electronic or other information transmission systems in connection with this Agreement or the other Credit 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.

(c) Payments. All payments required to be made under this Section 9.2 shall be made within 10 days of demand therefor.

(d) Survival. Without prejudice to the survival of any other agreement of the Credit Parties hereunder, the agreements and obligations of the Credit Parties contained in this Section 9.2 shall survive the termination of this Agreement, the termination of all Commitments, and the payment in full of the Advances and all other amounts payable under this Agreement.

Section 9.3 Waivers and Amendments. No amendment or waiver of any provision of this Agreement, the Notes, or any other Credit Document, nor consent to any departure by any Borrower or any Guarantor therefrom, shall in any event be effective unless the same shall be in writing and signed by the Majority Lenders and the Borrowers, and then such waiver or consent shall be effective only in the specific instance and for the specific purpose for which given; provided that:

(a) no amendment, waiver, or consent shall, unless in writing and signed by all the Lenders and the Borrowers, do any of the following: (i) reduce the principal of, or interest on, the Advances, (ii) postpone or extend any date fixed for any payment of principal of, or interest on, the Advances, including, without limitation, the Termination Date or (iii) change the number of Lenders which shall be required for the Lenders to take any action hereunder or under any other Credit Document;

(b) [Reserved];

(c) no amendment, waiver, or consent shall, unless in writing and signed by all the Lenders and the Borrowers, do any of the following: (i) waive any of the conditions specified in Sections 3.1, 3.2, 3.3 and 3.4 (ii) reduce any fees or other amounts payable hereunder or under any other Credit Document (other than those specifically addressed above in this Section 9.3), (iii) postpone or extend any date fixed for any payment of any fees or other amounts payable hereunder (other than those otherwise specifically addressed in this Section 9.3), (iv) amend Section 2.11(e), Section 7.6, this Section 9.3 or any other provision in any Credit Document which expressly requires the consent of, or action or waiver by, all of

the Lenders, (v) release any Guarantor from its obligation under any Guaranty or, except as specifically provided in the Credit Documents and as a result of transactions permitted by the terms of this Agreement, release all or a material portion of the Collateral, in each case except as permitted under Section 8.11(b) or 8.12; (vi) amend the definition of “Majority Lenders”; or (vii) amend the definitions of “Secured Parties”, “Obligations” or “Collateral” in a manner adverse to any Secured Party;

(d) no Commitment of a Lender or any obligations of a Lender may be increased or extended without such Lender’s written consent;

(e) [Reserved];

(f) [Reserved];

(g) no amendment, waiver, or consent shall, unless in writing and signed by the Administrative Agent in addition to the Lenders required above to take such action, affect the rights or duties of the Administrative Agent under this Agreement or any other Credit Document;

(h) [Reserved]; and

(i) [Reserved].

Notwithstanding anything to the contrary contained in this Section 9.3, (a) the Borrowers and the Administrative Agent may (but are not obligated to), without the input or consent of any other Lender, effect amendments to correct any jointly identified obvious error or any error or omission of a technical nature, in each case, in any provision of the Credit Documents and (b) guarantees, collateral security documents and related documents executed by any Borrower or any Subsidiary in connection with this Agreement may be in a form reasonably determined by the Administrative Agent and the Borrowers and the Administrative Agent may (but is not obligated to) amend, supplement or waive any provision thereof without the consent of any Lender if such amendment, supplement or waiver is delivered in order to (x) comply with local law or advice of local counsel, (y) cure ambiguities, omissions, mistakes or defects as determined by the Administrative Agent and the Borrowers or (z) cause such guarantee, collateral security document or other document to be not inconsistent or not in conflict with this Agreement and the other Credit Documents as determined by the Administrative Agent and the Borrowers; provided that, the inclusion in such other Credit Document of terms and provisions, rights or remedies in favor of a Lender Party and not addressed in this Agreement shall not be deemed to be in conflict or inconsistent with this Agreement.

Section 9.4 Severability. In case one or more provisions of this Agreement or the other Credit Documents shall be invalid, illegal or unenforceable in any respect under any applicable Legal Requirement, the validity, legality, and enforceability of the remaining provisions contained herein or therein shall not be affected or impaired thereby.

Section 9.5 Survival of Representations and Obligations. All representations and warranties contained in this Agreement or made in writing by or on behalf of the Credit Parties in connection herewith shall survive the execution and delivery of this Agreement and the other Credit Documents, the making of the Advances and any investigation made by or on behalf of the Lenders, none of which investigations shall diminish any Lender’s right to rely on such representations and warranties. All obligations of the Borrowers or any other Credit Party provided for in Sections 2.10, 2.12(c), 9.1 and 9.2 and all of the obligations of the Lenders in Section 8.5 shall survive any termination of this Agreement and repayment in full of the Obligations.

Section 9.6 Binding Effect. This Agreement shall become effective when it shall have been executed by the Borrowers and the Administrative Agent, and when the Administrative Agent shall have, as to each Lender, either received a counterpart hereof executed by such Lender or been notified by such Lender that such Lender has executed it and thereafter shall be binding upon and inure to the benefit of the Borrowers, the Administrative Agent, and each Lender and their respective successors and assigns, except that neither the Borrowers nor any other Credit Party shall have the right to assign its rights or delegate its duties under this Agreement or any interest in this Agreement without the prior written consent of each Lender.

Section 9.7 Successors and Assigns.

(a) Successors and Assigns Generally. 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 no Borrower nor any other Credit Party may assign or otherwise transfer any of its rights or obligations hereunder without the prior written consent of the Administrative Agent and each Lender, and no Lender may assign or otherwise transfer any of its rights or obligations hereunder except (i) to an assignee in accordance with the provisions of paragraph (b) of this Section, (ii) by way of participation in accordance with the provisions of paragraph (d) of this Section, or (iii) by way of pledge or assignment of a security interest subject to the restrictions of paragraph (f) of this Section (and any other attempted assignment or transfer by any party hereto shall be null and void). Nothing in this Agreement, expressed or implied, shall be construed to confer upon any Person (other than the parties hereto, their respective successors and assigns permitted hereby, Participants to the extent provided in paragraph (d) of this Section and, to the extent expressly contemplated hereby, the Related Parties of each of the Administrative Agent and the Lenders) any legal or equitable right, remedy or claim under or by reason of this Agreement.

(b) Assignment by Lenders. Any Lender may at any time assign to one or more assignees all or a portion of its rights and obligations under this Agreement (including all or a portion of its Commitment and the Advances at the time owing to it); provided that any such assignment shall be subject to the following conditions:

(i) Minimum Amounts.

(A) in the case of an assignment of the entire remaining amount of the assigning Lender's Commitment and/or the Advances at the time owing to it or contemporaneous assignments to related Approved Funds that equal at least the amount specified in paragraph (b)(i)(B) of this Section in the aggregate or in the case of an assignment to a Lender, an Affiliate of a Lender or an Approved Fund, no minimum amount need be assigned; and

(B) in any case not described in paragraph (b)(i)(A) of this Section, the aggregate amount of the Commitment (which for this purpose includes Advances outstanding thereunder) or, if the applicable Commitment is not then in effect, the principal outstanding balance of the Advances 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 or, if "Trade Date" is specified in the Assignment and Acceptance, as of the Trade Date) shall not be less than \$1,000,000, unless each of the Administrative Agent and, so long as no as no Default or Event of Default has occurred and is continuing, the Borrowers otherwise consents (each such consent not to be unreasonably withheld or delayed).

(ii) Proportionate Amounts. Each partial assignment shall be made as an assignment of a proportionate part of all the assigning Lender's rights and obligations under this Agreement with

respect to the Advance or the Commitment assigned. Assignments of Commitments and Advances must be made on a pro rata basis.

(iii) Required Consents. No consent shall be required for any assignment except to the extent required by paragraph (b)(i)(B) of this Section and, in addition:

(A) the consent of the Borrower Representative (such consent not to be unreasonably withheld or delayed) shall be required unless (x) a Default or an Event of Default has occurred and is continuing at the time of such assignment, or (y) such assignment is to a Lender or an Affiliate of a Lender; provided that the Borrower Representative shall be deemed to have consented to any such assignment unless it shall object thereto by written notice to the Administrative Agent within 10 days after having received notice thereof; and

(B) the consent of the Administrative Agent (such consent not to be unreasonably withheld or delayed) shall be required for assignments to a Person who is not a Lender or an Affiliate of a Lender.

(iv) Assignment and Acceptance. 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; provided that the Administrative Agent may, in its sole discretion, elect to waive such processing and recordation fee in the case of any assignment. The assignee, if it is not a Lender, shall (A) deliver to the Administrative Agent an Administrative Questionnaire and any required tax documents and (B) become a party to the Restructuring Support Agreement pursuant to the terms thereof. Notwithstanding anything set forth herein to the contrary, the effectiveness of any assignment hereunder is conditioned upon the assignee concurrently becoming a party to the Restructuring Support Agreement in accordance with the terms and conditions thereof (and any purported assignment that does not satisfy such condition shall be null and void *ab initio*).

(v) No Assignment to Certain Persons. No such assignment shall be made to (A) any Credit Party or any of the Credit Parties' Affiliates or Subsidiaries or (B) to any Defaulting Lender or any of its Subsidiaries, or any Person who, upon becoming a Lender hereunder, would constitute any of the foregoing Persons described in this clause (B).

(vi) No Assignment to Natural Persons. No such assignment shall be made to a natural Person.

(vii) 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 Representative and the Administrative Agent, the applicable pro rata share of Advances 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 and each other Lender hereunder (and interest accrued thereon), and (y) acquire (and fund as appropriate) its full Pro Rata Share of all Advances in accordance with its Pro Rata Share or such Advances. Notwithstanding the foregoing, in the event that any assignment of rights and obligations of any Defaulting Lender hereunder shall become effective under applicable Legal Requirement 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.

Subject to acceptance and recording thereof by the Administrative Agent pursuant to paragraph (c) of this Section, from and after the effective date specified in each Assignment and Acceptance, the assignee thereunder shall be a party to this Agreement 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 Sections 2.10, 9.1, 9.2 and 9.3 with respect to facts and circumstances occurring prior to the effective date of such assignment; 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 paragraph 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 paragraph (d) of this Section.

(c) Register. The Administrative Agent, acting solely for this purpose as the non-fiduciary agent of the Borrowers, shall maintain at its address referred to in Section 9.9 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 Commitments of, and principal amounts (and stated interest) of the Advances owing to, each Lender pursuant to the terms hereof from time to time (the "Register"). The entries in the Register shall be conclusive and binding for all purposes, absent manifest error, and the Borrowers, 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. The Register shall be available for inspection by the Borrowers and any Lender, at any reasonable time and from time to time upon reasonable prior notice. Each Borrower hereby agrees that the Administrative Agent acting as its agent solely for the purpose set forth above in this clause (c), shall not subject the Administrative Agent to any fiduciary or other implied duties, all of which are hereby waived by each Borrower.

(d) Participations. Any Lender may at any time, without the consent of, or notice to, the Borrowers or the Administrative Agent, sell participations to any Person (other than a natural Person or any Borrower or any of the Borrowers' Affiliates or Subsidiaries) (each, a "Participant") in all or a portion of such Lender's rights and/or obligations under this Agreement (including all or a portion of its Commitment and/or the Advances owing to it); provided that (i) such Lender's obligations under this Agreement shall remain unchanged, (ii) such Lender shall remain solely responsible to the other parties hereto for the performance of such obligations, and (iii) the Borrowers, 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 Section 9.2(a) with respect to any payments made by such Lender to its Participant(s).

Any agreement or instrument pursuant to which a Lender sells such a participation shall provide that such Lender shall retain the sole right to enforce this Agreement and to approve any amendment, modification or waiver of any provision of this Agreement; provided that such agreement or instrument may provide that such Lender will not, without the consent of the Participant, agree to any amendment, modification or waiver described in clauses (a), (b), (c) or (d) of this Section 9.7 (that adversely affects such Participant). The Borrowers agrees that each Participant shall be entitled to the benefits of Sections 2.10 and 2.12 (subject to the requirements and limitations therein, including the requirements under Section 2.12(g)) (it

being understood that the documentation required under Section 2.12(g) shall be delivered to the participating Lender)) to the same extent as if it were a Lender and had acquired its interest by assignment pursuant to paragraph (b) of this Section; provided that such Participant (A) agrees to be subject to the provisions of Section 2.13 as if it were an assignee under paragraph (b) of this Section; and (B) shall not be entitled to receive any greater payment under Sections 2.10 or 2.12, with respect to any participation, than its participating Lender would have been entitled to receive, except to the extent such entitlement to receive a greater payment results from a Change in Law that occurs after the Participant acquired the applicable participation. Each Lender that sells a participation agrees, at the Borrowers' request and expense, to use reasonable efforts to cooperate with the Borrowers to effectuate the provisions of Section 2.13 with respect to any Participant. To the extent permitted by law, each Participant also shall be entitled to the benefits of Section 7.4 as though it were a Lender; provided that such Participant agrees to be subject to Section 2.11(e) as though it were a Lender. Each Lender that sells a participation shall, acting solely for this purpose as a non-fiduciary agent of the Borrowers, maintain a register on which it enters the name and address of each Participant and the principal amounts (and stated interest) of each Participant's interest in the Advances or other obligations under the Credit Documents (the "Participant Register"); provided that no Lender shall have any obligation to disclose all or any portion of the Participant Register (including the identity of any Participant or any information relating to a Participant's interest in any commitments, loans, letters of credit or its other obligations under any Credit Document) to any Person 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 such Lender shall treat each Person whose name is recorded in the Participant Register as the owner of such participation for all purposes of this Agreement notwithstanding any notice to the contrary. For the avoidance of doubt, the Administrative Agent (in its capacity as Administrative Agent) shall have no responsibility for maintaining a Participant Register. Each Borrower hereby agrees that each Lender acting as its agent solely for the purpose set forth above in this clause (d), shall not subject such Lender to any fiduciary or other implied duties, all of which are hereby waived by each Borrower.

(e) Certain Pledges. Any Lender 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; provided that no such pledge or assignment shall release such Lender from any of its obligations hereunder or substitute any such pledgee or assignee for such Lender as a party hereto.

(f) Information. Any Lender may furnish any information concerning any Borrower or any Subsidiary in the possession of such Lender from time to time to permitted assignees and Participants (including prospective permitted assignees and participants), subject, however, to the provisions of Section 9.8.

Section 9.8 Confidentiality. Each of the Lender Parties agrees to keep confidential any information furnished or made available to it by any Credit Party pursuant to this Agreement and identified by such Credit Party as proprietary or confidential; provided that nothing herein shall prevent any Lender Party from disclosing such information (a) to any other Lender Party or any Affiliate of any Lender Party, or any officer, director, employee, agent, or advisor of any Lender Party or Affiliate of any Lender Party for purposes of administering, negotiating, considering, processing, implementing, syndicating, assigning, or evaluating the credit facilities provided herein and the transactions contemplated hereby, (b) to any other Person if directly incidental to the administration of the credit facilities provided herein, (c) as required by any Legal Requirement, (d) upon the order of any court or administrative agency, (e) upon the request or demand of any regulatory agency or authority, (f) that is or becomes available to the public or that is or becomes available to any Lender Party other than as a result of a disclosure by any other Lender Party prohibited by this Agreement, (g) in connection with any

litigation relating to this Agreement or any other Credit Document to which such Lender Party or any of its Affiliates may be a party, (h) to the extent necessary in connection with the exercise of any right or remedy under this Agreement or any other Credit Document, and (i) to any actual or proposed participant or assignee, in each case, subject to provisions similar to those contained in this Section 9.8. **NOTWITHSTANDING ANYTHING TO THE CONTRARY CONTAINED HEREIN, nothing in this Agreement shall (i) restrict any Lender Party from providing information to any bank or other regulatory or governmental authorities, including the Federal Reserve Board and its supervisory staff; (ii) require or permit any Lender Party to disclose to any Credit Party that any information will be or was provided to the Federal Reserve Board or any of its supervisory staff; or (iii) require or permit any Lender Party to inform any Credit Party of a current or upcoming Federal Reserve Board examination or any nonpublic Federal Reserve Board supervisory initiative or action.**

Section 9.9 Notices, Etc.

(a) All notices and other communications (other than Notices of Borrowing which are governed by Article 2 of this Agreement) shall be in writing and hand delivered with written receipt, telecopied, sent by facsimile (with a hard copy sent as otherwise permitted in this Section 9.9), sent by a nationally recognized overnight courier, or sent by certified mail, return receipt requested as follows: if to a Credit Party, as specified on Annex I, if to the Administrative Agent, at its credit contact specified under its name on Annex I, and if to any Lender at its credit contact specified in its Administrative Questionnaire. Each party may change its notice address by written notification to the other parties. All such notices and communications shall be effective when delivered, except that notices and communications to any Lender pursuant to Article 2 shall not be effective until received and, in the case of facsimile, such receipt is confirmed by such Lender verbally or in writing.

(b) Platform.

(i) Each Credit Party agrees that the Administrative Agent may, but shall not be obligated to, make the Communications (as defined below) available to the Lenders by posting the Communications on Debt Domain, Intralinks, Syndtrak or a substantially similar electronic transmission system (the "Platform").

(ii) The Platform is provided "as is" and "as available." The Agent Parties (as defined below) do not warrant the adequacy of the Platform and expressly disclaim liability for errors or omissions in the Communications. No warranty of any kind, express, implied or statutory, including, without limitation, any warranty of merchantability, fitness for a particular purpose, non-infringement of third-party rights or freedom from viruses or other code defects, is made by any Agent Party in connection with the Communications or the Platform. In no event shall the Administrative Agent or any of its Related Parties (collectively, the "Agent Parties") have any liability to the Borrowers or the other Credit Parties, any Lender or any other Person or entity for damages of any kind, including, without limitation, direct or indirect, special, incidental or consequential damages, losses or expenses (whether in tort, contract or otherwise) arising out of any Borrower's, any other Credit Party's or the Administrative Agent's transmission of communications through the Platform. "Communications" means, collectively, any notice, demand, communication, information, document or other material provided by or on behalf of any Credit Party pursuant to any Credit Document or the transactions contemplated therein which is distributed to the Administrative Agent or any Lender by means of electronic communications pursuant to this Section, including through the Platform.

(iii) Each Lender agrees that notice to it specifying that any Communication has been posted to the Platform (a "Notice") shall for purposes of this Agreement constitute effective delivery to such Lender of such information, documents or other materials comprising such Communication. Each